

Tolerating imperfection

The continuity of the Dutch cannabis policy in an international perspective, 1994-2023



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Abstract

For decades, the Netherlands, by decriminalizing cannabis sale in ‘coffeeshops’, had a uniquely liberal cannabis policy. However, from 1995 onwards, this cannabis policy has been made more repressive: the amount of cannabis that could be carried without risking penalties was lowered, and stricter regulations for coffeeshops were developed. Meanwhile, in recent years, more and more countries and states have moved in the opposite direction, by legalizing cannabis. Using John Kingdon’s Multiple Streams Framework, this thesis investigates why Dutch cannabis policy was made less liberal in the period 1994-2023, while it was liberalized in other states and countries.

Just like earlier literature, this thesis found that international law and international pressure played an important role in blocking liberalization in the 1990s. However, international pressure only partly explains the subsequent de-liberalization of cannabis policy. Domestic concerns about coffeeshop-related nuisance and crime were a more important factor explaining the new, stricter regulation of coffeeshops and the increased enforcement efforts. The updated, stricter cannabis policy was mostly continued in the following decades, with only relatively minor changes. This can be explained by a gridlock in parliament: neither pro-liberalization parties, nor parties favoring prohibitionist solutions could rely on a sustained parliamentary majority. They were dependent on the moderate VVD, which blocked most change, aside from several repressive measures aimed at combating nuisance. The large parties PvdA and CDA, when part of a coalition, also did not always spend a lot of effort on changing cannabis policy. This reluctance to change cannabis policy can be explained by the fact that significant cannabis policy change in either direction would have high political costs, high risks, and uncertain rewards.

A comparison with U.S. states, Uruguay, Canada and Germany, where cannabis has been legalized, shows that advancing the rights of cannabis users was an important factor for cannabis policy change in most of those countries. In the Netherlands, however, cannabis users’ rights were already secured in the 1970s. This helps explain why impetus for further liberalization has been comparatively low in the Netherlands. It also shows that the situation in the Netherlands is more comparable to these countries than to other countries where cannabis has not been legalized.

Introduction

In recent years, both politicians and media outlets frequently claim that the Netherlands has been 'overtaken' in terms of its cannabis policy.¹ The Netherlands long had a uniquely liberal cannabis policy. Since the 1970s, use and possession of cannabis have been fully decriminalized under the so-called 'tolerance policy'. What is more, retailing of cannabis in so-called 'coffeeshops' is allowed. Only the prohibition on large-scale production and transporting of cannabis is still strictly enforced. This made the Netherlands' cannabis policy the most liberal in Europe, if not the whole world. In the last decade, however, other states and countries have implemented more liberal cannabis policies. They have moved beyond decriminalization, fully legalizing marijuana. In 2012, referendums in the U.S. states of Washington and Colorado initiated the process towards legalization, while political proceedings to do the same were underway in Uruguay.² In 2018, forms of cannabis legalization were implemented in South Africa, Georgia and Canada.³ In April 2024, even the government of Germany, once a fierce critic of the liberal Dutch drug policy, legalized cannabis use.⁴

It seems puzzling that all these countries would legalize cannabis, and not the Netherlands. In the Netherlands, there was already significant support for cannabis legalization in the 1990s; at that time it was unthinkable in most of the world. In 1994 and the first half of 1995, cannabis policy liberalization seemed just around the corner. A new leftist-liberal coalition had just been formed, and a majority of coalition parties favored cannabis policy liberalization.⁵ In an interview, the new minister of Justice made it clear that she quite liked the idea of cannabis legalization.⁶

¹ For instance: *Handelingen II* 2018/19, nr. 42, item 5 (17-1-2019), 6 (D66); *Kamerstukken II* 2022/23, 24077, nr. 511 (17-3-2023), 4 (GroenLinks); RTL, 'Malta legaliseert cannabis als eerste in EU: waar blijft Nederland?', 2022, <https://www.rtl.nl/rtl-nieuws/artikel/5275165/cannabis-nederland-malta>, consulted 8-5-2024;

Nu.nl, 'Duitsers halen met nieuw wietbeleid Nederland in: cannabis telen nu toegestaan', 1 apr 2024, <https://www.nu.nl/buitenland/6307347/duitsers-halen-met-nieuw-wietbeleid-nederland-in-cannabis-telen-nu-toegestaan.html>, consulted 8-5-2024.

² Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 17; Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018, 131.

³ Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 4; Department of Justice Canada, 'Cannabis Legalization and Regulation', <https://www.justice.gc.ca/eng/cj-jp/cannabis/?wbdisable=true>, consulted 6-5-2024.

⁴ Bundesregierung.de, 'FAQ zur Legalisierung von Cannabis', <https://www.bundesregierung.de/breg-de/themen/tipps-fuer-verbraucher/cannabis-legalisierung-2213640>, consulted 9-4-2024.

⁵ PvdA, *Wat mensen bindt: Partij van de Arbeid verkiezingsprogramma 1994-1998*, 1994, 72-73; D66, *Ruimte voor de toekomst: verkiezingsprogramma Democraten 66*, 1994, 39.

⁶ De Volkskrant, 'Sorgdrager wil inkoop soft drugs regelen', 21-01-1995.

But this would not come to pass. Under the leftist-liberal coalition, cannabis policy actually became less liberal, not more. The maximum amount of cannabis one could buy legally was decreased from 30 to 5 grams.⁷ Coffeeshops had to conform to stricter regulations. Together with the addition of legal instruments allowing municipalities to close coffeeshops, this caused a sharp decline in the number of coffeeshops in the Netherlands.⁸ This new policy direction was maintained after 2002, when more conservative governments came to power.⁹

The lack of reform cannot be attributed to any love for the existing tolerance policy. A majority of parliamentarians wants Dutch cannabis policy to be changed radically. The tolerance policy is criticized by both progressive and conservative parties. Because large-scale production and transporting of cannabis are not allowed under the tolerance policy, coffeeshops have to be supplied illegally. To solve this problem, progressive parties want to fully legalize or decriminalize cannabis, including its production and supplying.¹⁰ Conservative parties, on the other hand, propose to move towards a more repressive drug policy. They feel that coffeeshops, by providing easy access to soft drugs, promote the use of dangerous and addictive substances.¹¹

Why does the Netherlands still have its tolerance policy, even though it has so few supporters? And why has the Netherlands not liberalized cannabis policy, when so many other states and countries have done so? In short: how did the Netherlands lose its position as the most liberal nation in terms of cannabis policy? I will answer this question with an in-depth analysis of Dutch politics and factors influencing it, using parliamentary debates as my most important source. I will combine this with an asymmetric comparison with several countries where some form of cannabis legalization has taken place: U.S. states, Canada, Uruguay and Germany.

⁷ Hans Ossebaard and Govert van de Wijngaart, 'Purple haze: the remaking of Dutch drug policy', *International Journal of Drug Policy* 9 (1998), 263-271, 263, 266-267.

⁸ Tom Blom, *Opiumwetgeving en drugsbeleid*, Deventer 2015, 67-70.

⁹ Tom Blom, *Opiumwetgeving en drugsbeleid*, Deventer 2015, 67-70; Tim Boekhout van Solinge, 'Nederlands drugsbeleid en de wet van de remmende voorsprong', *Nederlands Juristenblad* 40 (2010), 2580-2587, 2584.

¹⁰ See, for example the statements from leftist parties GroenLinks, PvdA, SP and D66 in parliament: *Handelingen II* 2016/17, nr. 47, item 8 (1-2-2017), 1 (SP), 9 (GroenLinks), 12 (D66); *Kamerstukken II* 2017/18, 24077, nr. 407 (19-1-2018), 22 (PvdA); *Handelingen II* 2018/19, nr. 42, item 5 (17-1-2019), 3, 5 (SP).

¹¹ See, for example: *Handelingen II* 2010/11, nr. 31 (7-12-2010), 73-76; *Kamerstukken II* 2021/22, 24077, nr. 490 (1-6-2022), 3 (PVV), 17-18 (SGP), 20 (CDA).

Literature

In the existing literature, there are three main explanations for the de-liberalization of Dutch cannabis policy from 1995 onwards: international pressure, a rise of conservatism and a lack of momentum caused by the absence of a broad social movement striving for cannabis policy reform. I will discuss each of these factors, and show that they do not adequately explain the tolerance policy's endurance. Finally, I will advance a new explanation, and show that it has not received enough attention in the existing literature.

International pressure

Many authors identify international pressure as the reason for the de-liberalization of Dutch cannabis policy in the 1990s. Hans Ossebaard and Govert van de Wijngaart, Boekhout van Solinge and Arjan Nuijten all point to the blocking influence of the Netherlands' European neighbors, especially France. In Boekhout van Solinge's words, France's new president Jacques Chirac, started a 'drug offensive' against the Netherlands.¹² Faced with very strong international opposition, these authors hold, the government did not dare liberalize cannabis policy any further.¹³ Caroline Chatwin also identifies pressure from the Netherlands' European neighbors as the main blocking factor. But she sees a clash with Sweden as more important than the French pressure. This clash, according to her, stopped a gradual trend towards more liberal drug policies in the European Union.¹⁴

Aside from diplomatic pressure, Dutch legal obligations may have played a role, according to Tom Blom. In 1995, the government-commissioned research report *Dutch drug policy: Continuity and change* (hereafter: *Continuity and change*) concluded that full legalization of drug sale was not possible because of the Dutch international obligations. Blom concludes that 'If legalization is not possible, they must have thought, the path of obligation should be taken (...)'.¹⁵ As Nuijten points out, the International Narcotics Control Board also found that the Netherlands would breach its legal obligations by legalizing cannabis policy, which put additional pressure on the Netherlands.¹⁶

¹² Tim Boekhout van Solinge, 'Nederlands drugsbeleid en de wet van de remmende voorsprong', *Nederlands Juristenblad* 40 (2010), 2580-2587, 2583.

¹³ Hans Ossebaard and Govert van de Wijngaart, 'Purple haze: the remaking of Dutch drug policy', *International Journal of Drug Policy* 9 (1998), 263-271, 267; Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 288-289; Tom Blom, *Opiumwetgeving en drugsbeleid*, Deventer 2015, 67-70, 2583.

¹⁴ Caroline Chatwin, 'Drug policy developments within the European Union: the destabilizing effects of Dutch and Swedish drug policies', *British Journal of Criminology* 43:3 (2003), 567-582, 580.

¹⁵ Tom Blom, *Opiumwetgeving en drugsbeleid*, Deventer 2015, 67-70.

¹⁶ Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 288-289.

There is no denying that international pressure played a large role in the left-liberal government's decision to abandon attempts to move towards a more liberal cannabis policy. In the 1995 policy memorandum which announced the new, less liberal cannabis policy, the government openly stated that international criticism had played a role in the formulation of the new policy.¹⁷ But international pressure is mostly used to explain why plans for liberalization were abandoned, not why the government turned to repression. None of the mentioned authors state that the stricter rules for coffeeshops were caused by international pressure, for instance.

Secondly, international pressure cannot explain why the Dutch cannabis policy was never made more liberal after the 1990s, as more countries moved away from repressive drug policies. Authors like Harry Levine and Franz Trautmann have claimed that the last decades have seen a gradual convergence within the EU towards a more liberal model of drug policies.¹⁸ In 2010, Tim Boekhout van Solinge actually concluded that the international tide was very favorable to move towards legalization of drugs, more so than in the 1990s.¹⁹ Malta, Luxembourg and Germany have shown that even EU member states can legalize recreational cannabis use.²⁰ So why did the Netherlands not liberalize cannabis policy as soon as the international situation was more favorable?

Rise of conservatism

This last question is somewhat better answered by the second explanation put forward in the literature: the rise of conservatism. Justus Uitermark, for instance, claims a surge of discontent with progressive policies around the turn of the century led to a loss of belief in the tolerance policy, and a growing call by conservatives to end it.²¹ Tim Boekhout van Solinge points to the influence of the right-wing government that ruled from 2002 onwards. He stated that in this new government the field of drug policy was mostly left to the Ministry

¹⁷ *Continuïteit en Verandering, Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 11.

¹⁸ Franz Trautmann, 'Changing paradigms in drug policies in EU Member States: From digression to convergence', in Renaud Colson and Henri Bergeron (eds.), *European Drug Policies: the Ways of Reform*, New York 2017, 241-253; Harry Levine, 'Global drug prohibition: its uses and crises', *International Journal of Drug Policy* 14 (2003), 145-153.

¹⁹ Tim Boekhout van Solinge, 'Nederlands drugsbeleid en de wet van de remmende voorsprong', *Nederlands Juristenblad* 40 (2010), 2580-2587.

²⁰ Piotr Bąkowski et al, 'Recreational use of cannabis: Laws and policies in selected EU Member States', [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/749792/EPRS_BRI\(2023\)749792_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/749792/EPRS_BRI(2023)749792_EN.pdf), consulted 14-1-2024; Government of Luxembourg, 'Cannabis Information', <https://cannabis-information.lu/en/>, consulted 14-1-2024.

²¹ Justus Uitermark, 'The Origins and Future of the Dutch Approach towards Drugs', *Journal of Drug issues* (2004), 511-532, 518, 525.

of Justice, while the influence of the Ministry of Public Health declined.²² Conservative politicians also made their influence known on the local level: the more conservative councilors a municipality has, the higher the probability that coffeeshops are disallowed, as Wouters, Benschop and Korf showed in 2010.²³

While the rise of conservatism offers an explanation for the continuation of the more repressive cannabis policy after 2002, it hardly serves as an explanation for the creation of this policy. After all, it was initiated by a leftist-liberal government, and designed by ministers from the leftist-liberal D66. Moreover, the motivations behind the conservative parties' support for de-liberalization are not really explored by these authors. Finally, one would expect a strong intensification of repression after 2002. In reality, such intensification of repressive cannabis policies only occurred after 2010, when the VVD-led government attempted to turn all coffeeshops into members-only clubs.²⁴

Lack of social support

The previous two factors focused on forces working against a more liberal cannabis policy. But it is also possible that the forces supporting it did not have enough power and momentum, as argued by Uitermark. He claims that youth movements were very prominent in the 1960s and 1970s, and helped in creating the momentum to decriminalize the use and small-scale sale of cannabis. In the decades since, their influence has greatly diminished, which has caused momentum towards a more liberal drug policy to dissipate.²⁵ Trautmann also points to the importance of social movements to move towards liberalization of drug policy, which reinforces this explanation.²⁶

Perhaps Dutch cannabis policy would indeed have turned out differently if there had been broad, engaged youth movements supporting cannabis policy liberalization in the 1990s and 2000s. However, it is important to note that the push for cannabis liberalization hardly suffered from a lack of engaged supporters. In the last decades, cannabis policy liberalization has been an important ambition for several influential political parties, such as D66, PvdA and GroenLinks. There have also been calls for decriminalization or legalization

²² Tim Boekhout van Solinge, 'Nederlands drugsbeleid en de wet van de remmende voorsprong', *Nederlands Juristenblad* 40 (2010), 2580-2587, 2584; Tom Blom, *Opiumwetgeving en drugsbeleid*, Deventer 2015, 67-70.

²³ Marije Wouters et al., 'Local politics and retail cannabis markets: The case of the Dutch coffeeshops', *International Journal of Drug Policy* 21 (2010), 315-320, 317.

²⁴ 'Vrijheid en verantwoordelijkheid: Regeerakkoord VVD-CDA', 40. Paragraph 2.2 explores this process further.

²⁵ Justus Uitermark, 'The Origins and Future of the Dutch Approach towards Drugs', *Journal of Drug Issues* (2004), 511-532, 518, 525.

²⁶ Franz Trautmann, 'Changing paradigms in drug policies in EU Member States: From digression to convergence', in Renaud Colson and Henri Bergeron (eds.), *European Drug Policies: the Ways of Reform*, New York 2017, 241-253, 250.

of cannabis cultivation from several mayors and even the Association of Dutch Municipalities.²⁷ These actors, with direct access to political power, were arguably more powerful than any youth movement. Moreover, on its own, this factor does not explain the de-liberalization of Dutch cannabis policy.

The missing piece

While there is no shortage of explanations for the de-liberalization of Dutch cannabis policy from the late 1990s onwards, an important piece of the puzzle is missing. International pressure and law might have prevented further liberalization, but cannot explain the turn to repression and its continuance afterwards. The turn to conservatism explains the persistence of the repressive cannabis policy, but not its creation. It is dubious whether there was actually a lack of support from society for cannabis policy liberalization, and this factor also does not fully explain the de-liberalization. Finally, none of these explanations really touch upon the question of what reasons Dutch citizens could have had for supporting a less liberal cannabis policy.

What were the shortcomings of the tolerance policy, and why did the leftist-liberal government turn to repression to solve them? When reading parliamentary debates and policy memorandums, a factor emerges which is barely touched upon by the explanations mentioned earlier: nuisance and unease about coffeeshops. In his recent dissertation, Arjan Nuijten also mentions nuisance from coffeeshops as a factor causing the rules for coffeeshops to be made more strict in the 1990s.²⁸ However, Nuijten only focuses on the local level, and does not discuss the role of nuisance in shaping national cannabis policy. Indeed, he seems to dismiss the importance of cannabis policy on the national level, suggesting that ‘real ‘Dutch’ drug policy was and is made on the streets’.²⁹ While I agree that developments on the local level are essential for understanding Dutch cannabis policy, this is no reason to dismiss the importance of the national cannabis policy. After all, the national policy delineated the boundaries for local cannabis policy. For instance, the mayor of Maastricht wanted to experiment with a decriminalized cannabis supply chain in 2005, but his efforts were blocked by the national government.³⁰

²⁷ For instance: NRC, ‘Coffeeshops: gedoogd maar nog altijd vogelvrij’, 20-5-2005; NRC, ‘Tilburg wil graag proef met legale wiet’, 25-12-2007; NRC, ‘35 gemeenten ondertekenen ‘wietmanifest’ joint regulation’, 31-12-2014.

²⁸ For instance: Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 250, 270, 282.

²⁹ Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 304.

³⁰ NRC, ‘In Europa valt het niet uit te leggen’, 24-2-2006, <https://www.nrc.nl/nieuws/2006/02/24/in-europa-valt-het-niet-uit-te-leggen-11087947-a232243>, consulted 31-5-2024.

An extensive, in-depth research of factors influencing decision-making about cannabis policy on the national level is missing. This thesis will fill this gap in the literature with a thorough historical analysis of political debate. Using Kingdon's Multiple Streams Theory, it aims to find out what problems parliamentarians identified with Dutch cannabis policy, what they hoped to do about it, and why some alternatives were implemented while others were rejected. Moreover, this research will look beyond the Netherlands to several states and countries where a significant liberalization of cannabis policy did occur. This way, influences and processes leading to cannabis policy liberalization that might be absent in the Netherlands can be identified.

Research Question

My research question will be: **'What factors caused the Netherlands' cannabis policy to become less liberal between 1994 and 2023, while U.S. states, Uruguay, Canada, and Germany moved toward liberalization?'** I define a 'liberal cannabis policy' as a cannabis policy that is not based on repression, but on decriminalization or legalization. The more activities like production, sale and use of cannabis are legal or decriminalized, the more liberal I consider a given policy to be. This research will primarily focus on policies directed to recreational use of cannabis, not so much medical use. The starting point of 1994 was chosen because that year saw the coming to power of a leftist-liberal coalition in the Netherlands, which soon after was responsible for a de-liberalization of Dutch drug policy. The ending point of 2023 allows me to take recent developments into account, without delving into the uncertain political landscape which emerged after the November 2023 general elections.

In order to better understand what factors can cause the liberalization of a country's cannabis policy, an asymmetric comparison with the United States, Uruguay, Canada, and Germany will be added. U.S. states, Uruguay and Canada were all among the first states to legalize cannabis. Germany is an insightful case because it, just like the Netherlands, is an E.U. member, which complicates the legalization process. I will elaborate on the reasons for selecting these cases later in this introduction.

To help answer the main question, I will use the following subquestions:

- What factors caused the failure of the liberalization attempts of the leftist-liberal government that ruled from 1994 to 2002?
- What factors caused the de-liberalization of Dutch cannabis policy under the leftist-liberal government that ruled from 1994-2002?

- What factors caused the resulting less liberal cannabis policy to remain entrenched after the 1990s?
- What factors caused liberalization of cannabis policy to succeed in U.S. states, Uruguay, Canada and Germany?

Sources and Methodology

This research consists of two parts. The first, central part will use an analysis of parliamentary debates and policy reports to identify the factors that caused the de-liberalization and entrenchment of Dutch cannabis policy. The second, smaller part will analyze the process towards legalization in U.S. states, Uruguay, Canada and Germany, and compare this with the situation in the Netherlands. In order to keep the scope of the research manageable, I will rely on secondary literature for the second part. For both parts, John Kingdon's Multiple Streams theory will be used as an analytical framework.

Multiple Streams Framework

Many different factors play a role in politics, and it can be difficult to answer the question why certain policies were considered. In order to approach this challenge in a structured way, I use John Kingdon's Multiple Streams Framework. Kingdon argues that the existence of a problem will only lead to policy reform if three different 'streams' are joined. Firstly, the problem must be recognized: it must get a place on the policy agenda.³¹ How a problem is interpreted is quite important: this can greatly influence if a problem is seen as serious, and also what alternatives are proposed as a solution.³² Secondly, an alternative must be available as a solution. Often, a great many options are available, but only a select number appear on the policy short list and are considered. 'Policy entrepreneurs' play an important role in this: they push certain alternatives and adjust them to changing circumstances in order to make them more attractive.³³ Thirdly, there is the political dimension. Factors like election results and changes of administration can promote or inhibit an alternative from being considered.³⁴

Often, problems and alternatives are ignored for years. But a so-called 'policy window' may suddenly join the streams, and catapult a policy option to the top of the policy agenda. This can happen, for instance, when an incident shifts public attention to a certain issue and weakens political opposition. A policy window does not always result in policy

³¹ John Kingdon, *Agendas, Alternatives, and Public Policies*, second edition, Harlow 2014, 113-114.

³² *Ibidem*, 109-111.

³³ *Ibidem*, 143-144.

³⁴ *Ibidem*, 163-164.

change, however. Policy entrepreneurs will have to use them correctly, and before the window of opportunity closes again.³⁵

Kingdon's framework is designed to understand why certain policies are considered, while others are not. It does not aim to give insight into the final decision-making process.³⁶ However, it can also help understand this stage of policymaking. When making a decision, the way a problem is understood can also determine the alternative that is chosen. The receptiveness of the political situation, for instance the existence of a parliamentary majority, also determines if a decision is reached. Of course, this approach has shortcomings. It is important to also take into account the fact that decision-making is not always a rational, problem-focused process. The choice for a certain solution might also reflect the wish to quickly do something without considering if it is the best solution, for instance.³⁷ Moreover, the shape of the political process, the route a proposal will have to travel, is also an important factor.³⁸

There has been debate about the ways in which Kingdon's model can also be applied to the decision-making process. Some, like Michael Howlett, Allan McConnell and Anthony Perl have argued that Kingdon's model should be extended with more streams, confluences, subconfluences, whirlpools and aqueducts.³⁹ Others, like Nicole Herweg, Christian Huß and Reimut Zohlnhöfer have proposed a simpler model, consisting of three streams just like the original framework.⁴⁰ This thesis only seeks to identify factors promoting or hampering cannabis policy reform, and does not have the ambition to provide a detailed analysis of the creation of policies. Therefore, I will be using a simple model consisting of three streams. Such a model, I would argue, offers enough flexibility to take into account all relevant factors. For instance, politicians' non-problem focused concerns and the shape of the political process can be shared under the political stream.

Multiple Streams Framework is quite appropriate to study decision-making about cannabis policy. In countries like Uruguay and Canada, cannabis legalization happened quite suddenly, after decades with little change in cannabis policy.⁴¹ This seems to confirm

³⁵ John Kingdon, *Agendas, Alternatives, and Public Policies*, second edition, Harlow 2014, 165-195.

³⁶ *Ibidem*, 196.

³⁷ Michael Howlett, Allan McConnell and Anthony Perl, 'Streams and stages: Reconciling Kingdon and policy process theory', *European Journal of Political Research* 54 (2015), 419-434, 428-429.

³⁸ *Ibidem*, 427.

³⁹ *Ibidem*, 427.

⁴⁰ Nicole Herweg, Christian Huß and Reimut Zohlnhöfer, 'Straightening the three streams: Theorising extensions of the multiple streams framework', *European Journal of Political Research* 54 (2015), 435-449, 435.

⁴¹ Rosario Queirolo, 'Uruguay: the first country to legalize cannabis', in: Tom Decorte et al. (eds), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, London 2020, 116-130, 120-121; Andrew Potter and Daniel Weinstock, *High Time: the Legalization and Regulation of Cannabis in Canada*, Montréal 2019, 9.

that a policy window is needed, after which change can happen rapidly. Moreover, this model has been used in publications about drug policy before, which shows its usefulness in this field of research.⁴² I use Multiple Streams Framework to guide the way I will analyze the sources.

Cannabis policy in the Netherlands

Analysis

My analysis will revolve around three main questions, which are based on Kingdon's Multiple Streams Framework. Kingdon states that for policy reform to happen, a problem must be recognized, the political situation must be receptive to change, and an alternative must be available.⁴³ Therefore, I will pose these questions to the sources:

- What problems with the current cannabis policy are identified?
- What alternatives to the present cannabis policy are proposed?
- Is the political situation receptive to policy reform?
 - Does a majority of parliamentarians support change? Why or why not?
 - How are alternatives received by parliamentarians? Do they show support, opposition, or are they indifferent?

I will try to identify policy windows in which cannabis policy reform was more likely than in other times. Such a policy window could, for instance, occur after a change of governments, or after a widely publicized event relating to cannabis or other drugs. If these policy windows did not lead to change, I will try to identify the reasons for this. Finally, I will take into account one factor that Kingdon does not discuss at length. This factor is international influence, which has been an important influence on Dutch cannabis policy decision-making. For instance, diplomatic pressure has often been brought forward as an important reason for the de-liberalization of Dutch cannabis policy in the late 1990s.⁴⁴ Another form of international influence is via the Netherlands' international legal obligations, particularly the Single Convention on Narcotic Drugs of 1961. This convention is often perceived as an important

⁴² For instance in: Franz Trautmann, 'Changing paradigms in drug policies in EU Member States: From digression to convergence', in Renaud Colson and Henri Bergeron (eds.), *European Drug Policies: the Ways of Reform*, New York 2017, 241-253, 242; Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018.

⁴³ John Kingdon, *Agendas, Alternatives, and Public Policies*, second edition, Harlow 2014, 90-164.

⁴⁴ For instance: Hans Ossebaard and Govert van de Wijngaart, 'Purple haze: the remaking of Dutch drug policy', *International Journal of Drug Policy* 9 (1998), 263-271, 267; Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 288-289; Tom Blom, *Opiumwetgeving en drugsbeleid*, Deventer 2015, 67-70, 2583; Caroline Chatwin, 'Drug policy developments within the European Union: the destabilizing effects of Dutch and Swedish drug policies', *British Journal of Criminology* 43:3 (2003), 567-582, 580.

barrier to the full legalization of cannabis.⁴⁵ International influence can influence all three streams: it may create new problems to be recognized, shape alternatives and influence political receptiveness.

Sources

The central institution determining whether significant policy reforms will or will not take place is parliament. Therefore, an analysis of parliamentary debates and the outcomes of parliamentary votes is central to this research. Dutch parliamentary debates are easily findable and searchable in the online repository officielebekendmakingen.nl. The parliamentary depositories contain large amounts of data, and most of it is not relevant. Debates and votes about cannabis policy are only a tiny part of the total data collection. Therefore, I have used the repository to search for debates with the subject 'cannabis' or related words. I used the following keywords:

- Cannabis, wiet, hasj, marijuana, marihuana, hennep
- Coffeeshop
- Softdrug

There is a risk that not all relevant debates have been found with these keywords. However, this risk is limited: parliamentary debates are very lengthy, so at least one of these words will almost always be present in a relevant debate. To fully understand the context of the debates, I have analyzed documents that play a role in the debates, like policy reports, election manifestos, and newspaper articles.

Debates in parliament give insight into the reasons why a decision was or was not taken, but might not give a complete view. There may be a multitude of reasons why not all influential factors can be inferred from parliamentary debates: a decision might not be controversial enough to warrant extensive debate, certain factors might be seen as so self-evident that they do not need to be mentioned, or considerations of political strategy might make it more attractive to not mention all reasons for taking a certain position.

Thankfully for the historian, cannabis policy is a very controversial topic: this ensures that there has been much debate about it in the last decades, and that political parties use all arguments they can to win the debate. However, the last possibility, that politicians might not be entirely honest because of strategic considerations, remains an issue. Analysis of confidential party documents would be a good way to see through such strategies, but sadly the research period is too recent for these documents to be public. Therefore, I will have to

⁴⁵ See, for instance: Tim Boekhout van Solinge, 'Nederlands drugsbeleid en de wet van de remmende voorsprong', *Nederlands Juristenblad* 40 (2010), 2580-2587; Marc Groenhuijsen, 'Van coffeeshop naar drugscafé? Enkele voetnoten bij de slepende discussie over het huidige Nederlandse drugsbeleid', *Delikt en Delinkwent* 2013/46 (2013).

make do with critically comparing politicians' statements in different debates and election manifestos, while trying to understand what strategic considerations might have been relevant for a party at a certain time. This will be helped by the fact that rival politicians will try to expose any inconsistency or hypocrisy.

International comparison

In the second part of this research, I will identify what factors caused proposals for cannabis legalization to succeed in U.S states., Uruguay, Canada and Germany. This can help better understand what factors obstructed cannabis policy liberalization in the Netherlands, through their presence or absence. I will mainly use secondary literature to analyze policy reforms and their origins in these countries. It is important to note that this strategy has significant limitations. The secondary literature may not provide a complete view of all the factors causing cannabis policy liberalization to succeed in these countries and states, and the relative importance and influence of these factors might not become clear. However, a full analysis of all relevant sources is simply not feasible. Moreover, the secondary literature will be enough for the purposes of this research: it will make it possible to identify factors influencing cannabis policy that are absent in the Dutch case.

Case selection

Firstly, the cases for the comparison have to be selected. Ideally, the number of cases is as high as possible, in order to convincingly identify determining factors. However, this should be balanced with the need to accurately and extensively analyze each case. To strike a balance between these two concerns, I will analyze four cases. The first case consists of the U.S. states where cannabis was legalized. In particular, I will focus on Colorado and Washington. This case is valuable because these states, being the first states in the world to legalize cannabis, could not follow the example of other states or countries. Secondly, the relation of these states with international law and international concerns is interesting, as they are not themselves signatories to the drug control treaties. It would have fallen to the federal government to stop their legalization, but this has not happened.⁴⁶

The second case is Uruguay. This case has been chosen not just because it was the first country to legalize recreational cannabis use, but also because the start of cannabis legalization was quite unique. There, it was not initiated after a referendum, court case or electoral change, but in the middle of a presidency with no prior plans for legalization.⁴⁷ The

⁴⁶ David Patton, 'A history of United States Cannabis Law', *Journal of Law and Health* 34:1 (2020), 1-30, 29-30.

⁴⁷ Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018, 89; Jonas von Hoffmann, "Someone has to be the

third case is Canada. This case is relevant because Canada was the first G7 member to legalize cannabis on the national level. What makes this case even more interesting is that cannabis policy liberalization had a significant chance of being implemented in the 1970s and early 2000s already, but failed because of a lack of urgency among pro-liberalization politicians.⁴⁸

Fourthly, I will analyze the process towards legalization in Germany, which became the first large EU nation to legalize cannabis earlier this year.⁴⁹ Like the Netherlands, Germany is a member of the European Union. This brings extra challenges when it comes to cannabis legalization, both because the prohibition of cannabis is to some extent enshrined in EU law, and because the free movement of goods and people within the EU ensures that cannabis legalization in one country potentially impacts the whole Union.⁵⁰ Because of this, the German government has not been able to liberalize cannabis policy as much as they initially planned.⁵¹ The Netherlands would also be confronted with these barriers, which makes it important to analyze what effect they had on the legalization of cannabis in Germany.

Comparative method

I will use three steps for comparing the selected cases, following Lange's theory of comparative historical methods.⁵² For the first step, the primary within-case analysis, I will describe the process towards legalization in the selected cases, using secondary literature. Secondly, as a secondary within-case method, I will use causal narrative, which tries to identify the causes of a phenomenon through narrative analysis.⁵³ In this case, I will try to identify the different factors which contributed to cannabis policy liberalization in the selected cases. To guide this analysis, I will use five questions, of which the last four are based on Kingdon's Multiple Streams Theory.

First": Tracing Uruguay's Marijuana Legalisation Through Counterfactuals', *Journal of Politics in Latin America* 12:2 (2020), 177–199, 188.

⁴⁸ Andrew Potter and Daniel Weinstock, *High Time: the Legalization and Regulation of Cannabis in Canada*, Montréal 2019, 13-14, 17.

⁴⁹ Bundesregierung.de, 'FAQ zur Legalisierung von Cannabis', <https://www.bundesregierung.de/breg-de/themen/tipps-fuer-verbraucher/cannabis-legalisierung-2213640>, consulted 9-4-2024.

⁵⁰ Robin Hofmann, 'The 'Total-Legalization' of Cannabis in Germany: Legal Challenges and the EU Free Market Conundrum', *European Journal of Crime Criminal Law and Criminal Justice* 31:2 (2023), 173-196, 195-196

⁵¹ Euractiv.de, 'Cannabis-Legalisierung: Ampel rudert wegen EU-Recht zurück', https://www.euractiv.de/section/gesundheit/news/cannabis-legalisierung-ampel-rudert-wegen-eu-recht-zurueck/?_ga=2.111030657.54387764.1715006196-534076980.1715006196, consulted 6-5-2024.

⁵² Matthew Lange, *Comparative-Historical Methods*, London 2013.

⁵³ Ibidem, 43.

1. What was the initial situation?
2. What problems were identified with the initial situation, and which of those problems formed the main impetus for cannabis policy liberalization?
3. What form of cannabis policy liberalization was proposed as an alternative for the existing cannabis policy?
4. What factors caused the internal political situation to be receptive to cannabis policy liberalization?
5. What influence did international law and pressure have on cannabis policy liberalization?

The last two questions both concern the receptiveness of the political situation to cannabis policy liberalization. This factor has been split in order to better take into account the important, sometimes deciding role of international influence. As a final step, I will compare the results, to determine which factors are shared between the cases. These factors may explain why cannabis policy liberalization succeeded in U.S. states, Uruguay, Canada and Germany. If the shared factors are not present in the Dutch case, this might help explain why cannabis policy liberalization did not succeed there.

1. 1994-2002: A Purple Policy Window?

The new government that came to power in August 1994 was a break with the Netherlands' political past. This was not because of the parties that formed the government: the conservative-liberal VVD, social-liberal D66 and social democrat PvdA had all been part of a coalition before. What made this 'purple' (the mix of liberal and conservative blue and social democrat red) cabinet unique was the absence of any Christian democrat parties. Christian Democrat parties had been a part of every Dutch coalition since 1918.⁵⁴ The creation of the purple coalition provided the opportunity to make reforms which the Christian democrats had long opposed. One such reform could have been a liberalization of cannabis policy. The largest and most powerful Christian Democrat party, the CDA, had supported the creation of the tolerance policy in 1976. But in 1994, they were opposed to any further liberalization and proposed extra measures to combat the production of soft drugs like cannabis.⁵⁵

It seemed very well possible that without the CDA in government, cannabis policy could be further liberalized. While the proponents of liberalization did not quite have a parliamentary majority by themselves, pro-liberalization parties D66 and PvdA did have a majority within the coalition. Admittedly, cannabis policy liberalization was a lot less important for their coalition partner, the VVD.⁵⁶ But the conservative liberal party was also not ideologically opposed to it, so it was not unthinkable that it could be swayed.⁵⁷ Moreover, D66 supplied the ministers of Public Health and Justice, key posts for shaping drug policy.⁵⁸ These ministers would determine what changes would be proposed.

Although the government agreement of 1994 was a bit vague on the prospect of cannabis policy liberalization, it kept the hope for it alive. While it promised to continue the 'relatively successful Dutch approach to the drug problem', it also announced that 'a systematic inventory would be made of the possibilities for exchanging international and national experiences, introducing nuances and testing new ways'.⁵⁹ Perhaps this inventory could be a first step towards a new approach? This seemed to be confirmed in January 1995, when Winnie Sorgdrager, the new minister of justice, was interviewed by the

⁵⁴ Parlement.com, *Kabinet Kok I (1994-1998)*,

https://www.parlement.com/id/vh8lnhronvvu/kabinet_kok_i_1994_1998, consulted 12-3-2024.

⁵⁵ CDA/G.J.M. Braks et al, *Wat echt telt: landelijk verkiezingsprogramma CDA 1994-1998*, 1994, 25.

⁵⁶ Drug policy was not mentioned in their 1994 election manifesto: VVD/D. Luteijn et al., *Nederland moet weer aan de slag: Kernprogramma 1994-1998*, 1994.

⁵⁷ Statements from VVD politicians showed that the party was quite conservative on the issue of cannabis policy reform, but not entirely opposed to a careful move towards liberalization of cannabis policy in a European context: see, for instance, *Kamerstukken II 1995/96*, 24077, nr. 35 (27-3-1996), 53.

⁵⁸ Parlement.com, *Kabinet Kok I (1994-1998)*,

https://www.parlement.com/id/vh8lnhronvvu/kabinet_kok_i_1994_1998, consulted 12-3-2024.

⁵⁹ 'Regeerakkoord 1994', *Kamerstukken II*, 1993/1994, 23715, nr. 11, 26.

Volkskrant. In this interview, she announced that she was considering to regulate, in other words decriminalize, the production of cannabis to supply coffeeshops.⁶⁰

In September 1995, the report *Continuity and change*, outlining the new government's drug policy, was released. In spite of the high hopes of progressives, it did not bring the change they desired. The coffeeshops, whose legality had long been questionable, had, according to the report, 'proven their right to exist'. But the report announced no decriminalization or legalization of the supplying of cannabis to coffeeshops. Thus the so-called 'back door problem' would continue to exist: coffeeshops would have to continue to source their cannabis from the criminal markets. Moreover, not all coffeeshops would be allowed to exist. The report promised harsher regulation, stricter enforcement of regulations, and supported the closing of large numbers of coffeeshops by municipalities.⁶¹ Finally, to combat drug tourism, the upper limit of cannabis that could be sold in one transaction would be lowered, from 30 grams to just 5 grams.⁶²

In summary, the progressive Purple cabinet not only failed to liberalize cannabis policy, but actually made it more repressive. Why did this happen? What problems with cannabis policy were recognized, what alternatives were proposed, and why did the purple government opt for a more repressive approach? In this chapter, I will first discuss what problems with the existing cannabis policy were identified. Secondly, I will discuss what radical alternatives to the existing cannabis policy were proposed. Thirdly, I will discuss why one of these alternatives, liberalization of cannabis policy, did not succeed. Finally, I will discuss what factors caused the leftist-liberal government to implement a more repressive policy.

1.1 The drive to change

First of all, it is important to know why politicians wanted to change the existing cannabis policy. How did they evaluate the tolerance policy, and what flaws did they recognize? Unsurprisingly, this differed from party to party. A majority of parliamentarians felt that the tolerance policy had had at least some positive effects. Compared to other European countries, the Netherlands had relatively low numbers of hard drug addicts.⁶³ For left-wing parties, but also the VVD and CDA, this was a sign that the essence of the tolerance policy

⁶⁰ De Volkskrant, 'Sorgdrager wil inkoop soft drugs regelen', 21-01-1995.

⁶¹ 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II* 1994/95, 24 077, nrs. 2-3, 56.

⁶² *Ibidem*, 67.

⁶³ *Ibidem*, 8.

was working: soft drug users were kept away from the more dangerous hard drugs.⁶⁴ The PvdA and D66 also considered the fact that drug users were not criminalized a positive aspect of the Dutch drug policy.⁶⁵ Only the small, radical Christian democrat parties SGP, RPF and GPV did not see any positive points of the existing cannabis policy.

But even if the core of the tolerance policy still enjoyed broad support, no one denied that there were serious problems. The creators of the tolerance policy had not anticipated the rise of the commercial, semi-illegal coffeeshops. These cannabis retailers had no legal way to source their cannabis supply, which meant they fueled organized crime. Moreover, the coffeeshops caused nuisance for local residents, and gave the Netherlands a dubious reputation as a 'drug user's paradise'. Christian democrat parties also feared that coffeeshops made cannabis too easily accessible, and thereby stimulated cannabis use. Finally, the principle at the heart of the tolerance policy, 'gedogen' (the toleration of acts that are formally punishable), was more and more seen as undesirable.

The problems with coffeeshops

Nowadays, coffeeshops are seen as an integral part of Dutch cannabis policy. But this was not the original intention of its creators. They envisioned a more small-scale system of tolerated 'house dealers' in youth centers, music venues and at festivals. But the demand for cannabis, and the profitability of supplying it, proved to be far too high to keep cannabis trade limited to the 'house dealers'.⁶⁶ The first coffeeshops emerged in Dutch cities in the middle of the seventies, and their number grew rapidly in the 1980s. Local authorities were at a loss what to do with this new phenomenon. During the 80s, the local approaches to coffeeshops were highly chaotic and inconsistent: they were frequently raided by the police, but many were allowed to continue their operation.⁶⁷ This inconsistent approach was exacerbated by the lack of direction from the national government, and the absence of legal instruments to deal with the coffeeshops effectively.⁶⁸

⁶⁴ *Handelingen II* 1993/94, nr. 91 (13-9-1994), 91-6071 (GroenLinks); *Handelingen II* 1994/95, 23834, nr. 11 (18-10-1994), 11-496 (D66); *Handelingen II* 1995/96 nr. 3 (21-9-1995), 3-136 (PvdA); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 21 (CDA), 69 (SP); *Kamerstukken II* 1996/97, 23490, nr. 66 (6-1-1997), 6 (CDA); *Kamerstukken II* 1996/97, 24077, nr. 43 (30-1-1997), 7 (VVD).

⁶⁵ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 12 (PvdA); *Kamerstukken II* 1995/96, 24077, nr. 35 (27-3-1996), 4 (minister D66).

⁶⁶ Gemma Blok and James Kennedy, 'Geef die joint eens door': het problematische idealisme van het Nederlandse soft drugsbeleid, 1976-heden. In P. van Dam, B. Mellink en J. Turpijn (Eds.), *Onbehagen in de polder: Nederland in conflict sinds 1795*, Amsterdam: Amsterdam University Press, 2014, 89-111, 295-299, 105-106.

⁶⁷ Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 97, 240-241, 259.

⁶⁸ *Ibidem*, 247, 259.

However, around the same time, local governments, police and prosecutors started to realize that coffeeshops could also fulfill a positive role. They could function as the next evolution from youth centers with house dealers, keeping cannabis users away from hard drugs.⁶⁹ In 1985, the Amsterdam Public Prosecution released a new guideline specifically tailored to coffeeshops, detailing the conditions under which a coffeeshop would be allowed to operate. In the following years, these conditions would be formalized into the AHOJ-G criteria: no advertisement (Afficiëring), no sale of hard drugs (H), no nuisance (Overlast), no sale to minors (Jeugdigen), and no sale of amounts of cannabis above thirty grams (G).⁷⁰ These criteria came to be used nationally in 1991.⁷¹ While coffeeshops thus received formal recognition, their rapid, chaotic beginnings and semi-legal status would create significant problems.

The 'back door problem'

Perhaps the most fundamental flaw in the tolerance policy for coffeeshops was the aforementioned 'back door problem'. Coffeeshops were allowed to sell small amounts of cannabis, but the prohibition on production and large-scale cannabis meant that they had no legal way to buy their stock. They were forced to buy their cannabis from criminals, thus fueling illegal smuggling and cannabis cultivation. This flaw in the tolerance policy did not really get attention in the 1970s and early 1980s. The focus of politicians and the police was directed at hard drugs such as heroin: these substances were far more dangerous for public health than cannabis.⁷² Thus, the 'back door problem' was not really recognized. Largely unbothered by enforcement authorities, organized crime groups were free to make huge profits by supplying cannabis to the nascent coffeeshops.⁷³ From the mid-1980s onwards, they also started to produce cannabis in the Netherlands itself. This venture proved to be so successful that within a decade, about half of all cannabis sold in coffeeshops was estimated to be 'Nederwiet', weed produced in the Netherlands.⁷⁴ The substantial profits made by these operations had to be laundered, which threatened to interweave the legal and the illegal economy.⁷⁵

Only in the late 1980s did the police start to realize the seriousness of the problem of cannabis-related crime. It took even longer for policymakers and politicians to pick up on this

⁶⁹ Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 97, 240-241, 237.

⁷⁰ Ibidem, 238.

⁷¹ Ibidem, 267.

⁷² Jack Wever, *Geschiedenis van de Nederlandse Drugsbestrijding (1961-2011): Het Dirty Harry-Probleem*, dissertation 2020, 24, 122-123

⁷³ Ibidem, 47, 196.

⁷⁴ Ibidem, 296.

⁷⁵ Ibidem, 206.

problem.⁷⁶ But by 1994, the issue of organized crime was firmly on the political agenda. Just like the issue of nuisance, both progressive and conservative politicians called attention to this problem. However, they saw different root problems, and different solutions. Progressive parties thought the ‘backdoor problem’ was the root problem, and held that it could be solved by creating a legal or decriminalized system for supplying cannabis to the coffeeshops.⁷⁷ The CDA, on the other hand, linked the issue of organized crime to drugs and cannabis in general, and thought that organized crime should be fought by lowering the volume of drug use and supply.⁷⁸ The VVD also thought that a tough approach to crime was the solution. A VVD politician even stated that solving the ‘backdoor problem’ would not solve crime: criminals would just find other means to make illegal profits.⁷⁹

Nuisance

The chaotic, unregulated beginnings of the coffeeshop and its link with the criminal world also created a second problem: nuisance. It is difficult to pinpoint the exact nature and extent of the nuisance coffeeshops generated. The exact complaints were specific to the coffeeshop and its location. That being said, *Continuity and Change* mentioned several forms of nuisance that were said to often occur near coffeeshops: loitering customers, pollution, traffic problems, and the sale of hard drugs in the coffeeshop or nearby. These problems were said to be especially severe near coffeeshops visited by foreigners: these ‘drug tourists’ were said to frequently show aggressive and intimidating behavior.⁸⁰ However, the extent of this nuisance is hard to ascertain. Partly, nuisance from coffeeshops was not that different from the nuisance generated by cafes or bars, as was pointed out in *Continuity and Change*.⁸¹

So why were coffeeshops seen as a bigger source of nuisance? In an evaluation of the functioning of coffeeshops by Ed Leuw from 1995, several explanations were offered. Firstly, the semi-illegal character of coffeeshops might have inherently caused unease. Leuw noted that the situation was similar to that of abortion clinics. When abortion was still illegal, they were surrounded by an atmosphere of sleaziness and untrustworthiness; this

⁷⁶ Jack Wever, *Geschiedenis van de Nederlandse Drugsbestrijding (1961-2011): Het Dirty Harry-Probleem*, dissertation 2020, 196-197.

⁷⁷ Examples: *Handelingen II* 1993/94, 23047, nr. 33 (7-3-1994), 33-15 (GroenLinks); *Handelingen II* 1995/96 nr. 2 (20-9-1995), 2-12 (D66); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 12 (PvdA), 69 (SP).

⁷⁸ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 37 (CDA).

⁷⁹ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 39 (VVD); *Kamerstukken II* 1995/96, 24077, nr. 35 (27-3-1996), 54 (VVD).

⁸⁰ ‘Het Nederlandse drugsbeleid: continuïteit en verandering’, *Kamerstukken II* 1994/95, 24 077, nrs. 2–3, 37.

⁸¹ ‘Het Nederlandse drugsbeleid: continuïteit en verandering’, *Kamerstukken II* 1994/95, 24 077, nrs. 2–3, 10.

atmosphere largely disappeared after abortion was legalized.⁸² Secondly, the coffeeshops were seen as attracting a 'deviant' group of customers, like criminals and troubled adolescents.⁸³ Finally, Leuw remarked that coffeeshops often appeared in neighborhoods that were already faced with many problems. Local residents might attribute pre-existing problems to the coffeeshops: it could serve as a visible, tangible manifestation of those problems.⁸⁴ Another interesting explanation, put forward by Christian Bröer, is that feelings of nuisance might have been increased by the attention that the issue got in official policy.⁸⁵ So greater attention to the issue of coffeeshop-related nuisance by policymakers might have increased the feelings of nuisance.

There was no shortage of attention to the issue of coffeeshop-related nuisance in the 1990s. Attention to the issue by politicians and the media had emerged from the late 1980s onwards, as the number of coffeeshops increased.⁸⁶ By the time that the purple governments were in power, a consensus had emerged in parliament that nuisance from coffeeshops was a problem in urgent need of addressing. For example, minister of Justice Winnie Sorgdrager, from the progressive D66, said in 1994: 'The nuisance has become too much - we all agree on that'.⁸⁷ Almost all parties, from left to right, mentioned the problem in the period 1994-2002, many multiple times.⁸⁸ Conservative parties CDA, SGP and RPF also complained that municipalities lacked the legal instruments to actually enforce the existing rules.⁸⁹ Only GroenLinks never mentioned coffeeshop-related nuisance as a problem.

International reputation

Already in the 1970s and 1980s, the Netherlands faced foreign criticism for its supposedly lax attitude to cannabis smuggling, especially from Germany.⁹⁰ In the 1990s, this criticism

⁸² Ed Leuw, *De ontwikkeling van een onderzoekpakket naar het functioneren van coffeeshops: probleemanalyse en onderzoeksthema's*, 1995, 1.

⁸³ *Ibidem*, 10.

⁸⁴ *Ibidem*, 16.

⁸⁵ Christian Bröer, *Beleid vormt overlast: Hoe beleidsdiscoursen de beleving van geluid bepalen*, dissertation University of Amsterdam 2006, 11-12.

⁸⁶ Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 263.

⁸⁷ *Handelingen II*, 1993/1994, nr. 91 (13-9-1994), 6071.

⁸⁸ An incomplete list of examples: *Handelingen II* 1993/94, nr. 91 (13-9-1994), 91-6070 (D66, SGP, RPF), 91-6071 (CDA); *Handelingen II* 1994/95, 23834, nr. 11 (18-10-1994), 11-475 (CDA), 11-482 (PvdA), 11-496 (D66), 11-504 (SP); *Handelingen II* 1994/95, 23900-VII, nr. 13 (25-10-1994), 13-607 (AOV); *Handelingen II* 1995/96 24400-VI, nr. 26 (15-11-1995), 26-1841 (Groep-Nijpels); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 3 (PvdA); *Kamerstukken II* 1996/97, 23490, nr. 43 (30-1-1997), 7 (VVD).

⁸⁹ *Handelingen II* 1993/94, nr. 91 (13-9-1994), 91-6070 (SGP, RPF); *Kamerstukken II* 1996/97, 23490, nr. 43 (30-1-1997), 2 (CDA); *Handelingen II* 1995/96 24400-VI, nr. 26 (15-11-1995), 26-1819 (CDA).

⁹⁰ Gemma Blok and James Kennedy, 'Geef die joint eens door': het problematische idealisme van het Nederlandse soft drugsbeleid, 1976-heden. In P. van Dam, B. Mellink en J. Turpijn (Eds.), *Onbehagen in de polder: Nederland in conflict sinds 1795*, Amsterdam: Amsterdam University Press, 2014, 89-111, 295-299, 105-106, 100-102.

became even more intense because of two factors. Firstly, the rise of the coffeeshops, which attracted young people from neighboring countries to come to the Netherlands to buy cannabis. This was much against the will of the governments of these countries: they felt that their efforts to cut off access to drugs were undermined by the Dutch.⁹¹ Secondly, European Union countries were preparing to open their borders as a result of the Schengen treaty. With open borders, it was feared, even more drug tourists would make their way to the Netherlands, and return with large amounts of both soft- and hard drugs.⁹² Not all foreign concerns were based on facts. For instance, Jacques Chirac, president of France from 1995 to 2007, was notorious in the Netherlands for his outrageous claims about the amounts of drugs which entered France from the Netherlands.⁹³ But even if not all criticism was based on facts, it could not be denied that the semi-legal coffeeshops negatively impacted the Netherlands' image at a time when most of the world still fervently pursued total prohibition of drugs.

Parliament was divided in its reaction to the foreign criticism. The pro-liberalization parties SP, GroenLinks, PvdA and D66 expressed annoyance at the, in their eyes, unjustified foreign criticism.⁹⁴ But D66 and PvdA were also hopeful: they believed that other countries would come around eventually. They emphasized that there was quite a lot of sympathy for the Dutch approach to drugs at the local and regional level in neighboring countries.⁹⁵ The other parties were less optimistic. The VVD held that the Netherlands could not afford to disregard foreign criticism, even if it may not be entirely justified.⁹⁶ The CDA and the smaller conservative parties, agreed. Moreover, they felt that the foreign criticism was not that outrageous, and that the Netherlands would do well to listen.⁹⁷ For instance, CDA spokesman Wim van de Camp urged the government to lose its 'arrogant tone', in order to restore the relations with France and Germany.⁹⁸ And AOV spokesman Cees van Wingerden

⁹¹ For instance, this is visible in a statement Jacques Chirac made in 1995 during his (successful) campaign to become president of France: NRC, 'Chirac: drugsbeleid van Nederland is schandig', 26-4-1995.

⁹² Hans Ossebaard and Govert van de Wijngaart, 'Purple haze: the remaking of Dutch drug policy', *International Journal of Drug Policy* 9 (1998), 267-268.

⁹³ Tim Boekhout van Solinge, 'Nederlands drugsbeleid en de wet van de remmende voorsprong', *Nederlands Juristenblad* 40 (2010), 2580-2587, 2583-2584.

⁹⁴ *Handelingen II* 1994/95 nr. 86 (13-6-1995), 86-5081 (GroenLinks); *Handelingen II* 1995/96 nr. 4 (26-9-1995), 4-200/201 (minister D66); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 4 (PvdA); *Kamerstukken II* 1995/96, 24077, nr. 35 (27-3-1996), 23 (SP).

⁹⁵ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 4, 20 (PvdA), 48 (D66).

⁹⁶ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 38, 42.

⁹⁷ *Handelingen II* 1994/95, 23834, nr. 11 (18-10-1994), 11-501 (SGP); *Kamerstukken II* 1994/95, 19326, nr. 95 (14-11-1994), 4 (CDA); *Handelingen II* 1994/95, 23900-X, nr. 26 (23-11-1994), 26-1674 (CDA); *Handelingen II* 1995/96 nr. 2 (20-9-1995), 2-86 (GPV); *Kamerstukken II* 1996/97, 24077, nr. 43 (30-1-1997), 12-13 (RPF).

⁹⁸ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 30.

stated that the Netherlands had no reason to have a 'haughty stance', as it was a major exporter of drugs.⁹⁹

Condoning drug use?

While there was significant agreement about the existence of drug-related nuisance and organized crime, there was disagreement about another issue. Did the government, by allowing coffeeshops to sell cannabis, condone or even stimulate cannabis use? Progressive parties did not think so. They acknowledged that cannabis use was not harmless, and that it should be discouraged. But they felt that drug use was inevitable, and that the risks of cannabis were not so big as to warrant an enforced prohibition.¹⁰⁰ The coffeeshops, they held, helped separate the markets of soft- and hard drugs, thus protecting cannabis users from more dangerous substances.¹⁰¹ The VVD was less positive about the coffeeshops, but did not think that they stimulated drug use.¹⁰²

CDA, AOV, SGP, GPV and RPF held a different view. They emphasized the dangers of cannabis more, specifically its addictive potential for young people.¹⁰³ But the main disagreement between them and other parties was about the signal sent by the existing cannabis policy. CDA still accepted the idea that the tolerance policy should be maintained to keep soft drug users away from more harmful substances.¹⁰⁴ But the Christian democrat party felt that the coffeeshops went too far. The CDA thought that by condoning coffeeshops, the state gave the signal that drug use was normal and harmless. The party feared this would increase drug use and addiction.¹⁰⁵ Moreover, the CDA also had less faith that coffeeshops followed the rules, and stated that many sold hard drugs.¹⁰⁶ The small Christian democrat parties SGP, GPV and RPF and the conservative AOV also held these concerns. But they went farther: they thought that not just coffeeshops, but the tolerance policy in general condoned drug use.¹⁰⁷

⁹⁹ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 30, 70.

¹⁰⁰ For instance: *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 4 (PvdA), 22 (D66) 60 (GroenLinks), 69 (SP).

¹⁰¹ *Handelingen II* 1993/94, nr. 91 (13-9-1994), 91-6070 (PvdA); *Handelingen II* 1995/96 nr. 3 (21-9-1995), 3-136 (PvdA); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 69 (SP (implicitly)); *Handelingen II* 1997/98, 25324, nr. 71 (8-4-1998), 71-5282 (GroenLinks and D66).

¹⁰² This tone can, for instance, be seen in: *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 38.

¹⁰³ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 21-22, 27 (CDA), 63 (RPF), 66 (SGP), 68 (GPV), 71 (AOV).

¹⁰⁴ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 20, 24 (CDA).

¹⁰⁵ *Handelingen II* 1994/95, nr. 2 (21-9-1994), 2-26 (GPV); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 25, 46 (CDA), 62 (RPF); *Handelingen II* 1999/2000 26800-VI, nr. 17 (3-11-1999), 17-1197 (RPF); *Handelingen II* 1997/98, 25324, nr. 71 (8-4-1998), 71-5281, 71-5303 (SGP).

¹⁰⁶ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 24 (CDA); *Kamerstukken II* 1996/97, 24699, nr. 13 (27-11-1996), 6 (CDA).

¹⁰⁷ *Handelingen II* 1993/94, nr. 91 (13-9-1994), 91-6070 (RPF); 91-6071 (GPV); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 71 (AOV).

Discontent with ‘gedogen’

The concerns over coffeeshops were quite practical in nature. But some parties raised a more fundamental question: was the approach of ‘tolerance’, ‘gedogen’ in Dutch, not intrinsically flawed? The use and sale of cannabis, formally illegal, was allowed to happen in broad daylight, or even in officially condoned ‘coffeeshops’. In a sense, the government systematically refused to enforce its own laws. In parliament, there were mixed feelings about ‘gedogen’. On the one hand, most parties agreed that the tolerance policy, by keeping soft drug users away from hard drugs, had been beneficial for public health.¹⁰⁸ However, no party was really enthusiastic about ‘gedogen’ itself; the practice of systematically ignoring acts which were officially considered criminal.

The strongest criticism came from the Christian democrats. CDA politician Wim van de Camp presented ‘gedogen’ as an anachronism from the 1970s and 1980s, when ‘the trust in people and society was great, sometimes too great.’¹⁰⁹ The CDA could know, as its direct predecessors had supported the tolerance policy’s creation, and the party made no attempt to end it during the 14-year long period of CDA-led cabinets. Regular references to this responsibility by D66 did not stop the CDA from attacking the very idea of ‘gedogen’.¹¹⁰ Van de Camp stated that ‘a complex society like ours needs clear rules that are actually followed’.¹¹¹ They were joined in their criticism by the small conservative parties SGP, GPV and RPF.¹¹²

But the left side of the political spectrum was also not blind to the inherent paradoxicality of ‘gedogen’. In January 1995, D66 minister of Justice Sorgdrager, for instance, called it ‘hypocritical’ to forbid supplying coffeeshops while they were allowed to sell cannabis.¹¹³ But left wing parties mostly had practical concerns: for them, ending the ‘back door problem’ was the most urgent issue. If full legalization of cannabis would not be available as a solution, they supported extending the tolerance policy to the production and supplying of cannabis.¹¹⁴ All in all, leftist parties preferred the ‘hypocrisy’ of ‘gedogen’ to a

¹⁰⁸ *Handelingen II* 1993/94, nr. 91 (13-9-1994), 91-6071 (GroenLinks); *Handelingen II* 1994/95, 23834, nr. 11 (18-10-1994), 11-496 (D66); *Handelingen II* 1995/96 nr. 3 (21-9-1995), 3-136 (PvdA); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 21 (CDA), 69 (SP); *Kamerstukken II* 1996/97, 23490, nr. 66 (6-1-1997), 6 (CDA); *Kamerstukken II* 1996/97, 24077, nr. 43 (30-1-1997), 7 (VVD).

¹⁰⁹ *Kamerstukken II* 1996/97, 25085, nr. 3 (26-3-1997), 4.

¹¹⁰ Examples of D66 using the CDA’s role in creating the tolerance policy to criticize the CDA: *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 20 (D66); *Kamerstukken II* 1994/95, 19326, nr. 118 (22-6-1995), 8 (D66); *Kamerstukken II* 1995/96, 24699, nr. 13 (27-11-1996), 9, 15 (D66).

¹¹¹ *Kamerstukken II* 1996/97, 25085, nr. 9 (26-6-1997), 4.

¹¹² Examples: *Handelingen II* 1993/94, nr. 91 (13-9-1994), 91-6068 (GPV), 91-6070 (SGP); *Handelingen II* 1998/99 26200-VI, nr. 20 (4-11-1998), 20-1240 (RPF); *Handelingen II* 1999/2000 26800-VI, nr. 17 (3-11-1999), 17-1197 (RPF).

¹¹³ Leeuwarder courant, ‘CDA roept minister ter verantwoording’, 23-01-1995.

¹¹⁴ This is confirmed, for instance, in these parties’ support for the motion-Apostolou in 2000, which will be discussed later.

prohibitionist system. The VVD also wanted to continue the tolerance policy, but was far more hesitant about extending it to the supply side.¹¹⁵ The conservative liberals agreed with the other parties that ‘gedogen’ was, in essence, undesirable: in 1996, VVD spokesman Benk Korthals called the tolerance policy ‘quite a hypocritical policy’.¹¹⁶

Party positions on the tolerance policy

After a period in which hard drugs got most attention, cannabis policy was back on the agenda in the early 1990s. While there was significant agreement that the existing tolerance policy had been beneficial for public health, no one denied that there were large problems. But the root causes of these problems, and their seriousness, was debated. Therefore, the existing cannabis policy was evaluated differently by different parties.

Left-wing parties saw a policy that had largely been a success in keeping drug addiction limited. They felt that coffeeshops played a valuable role, keeping markets for hard drugs and soft drugs separated. But they also saw problems. For them, the most fundamental flaw, that urgently had to be solved, was the ‘back door problem’. The VVD largely shared the left wing parties’ assessment that the tolerance policy was a flawed system that produced relatively good outcomes. But the conservative-liberal party placed more emphasis on the combating of nuisance and the safeguarding of the Netherlands’ international reputation. Moreover, the VVD felt that cannabis-related crime could be fought without solving the ‘back door problem’.

The other conservative parties had a significantly less positive view of the tolerance policy. The CDA still supported the core of the policy, but felt that it had evolved too far: the coffeeshops caused too many problems. Nuisance from coffeeshops and the damage to the Netherlands’ international reputation were important examples, but more important was the CDA’s belief that coffeeshops condoned or even stimulated drug use. For the small Christian democrat parties SGP, RPF and GPV, the concern that coffeeshops promoted drug use was also very important. However, unlike the other parties, they did not think the tolerance policy had any redeeming qualities, and fully rejected all aspects of it. In summary, while all parties recognized that the existing cannabis policy had problems, their evaluation of the existing policy differed significantly. Unsurprisingly, this also had consequences for what alternatives to the existing policy they supported.

¹¹⁵ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 46.

¹¹⁶ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 38.

1.2 The alternatives

To solve the problems of the existing cannabis policy, three main routes were proposed in parliament. Firstly, the existing policy could be continued, with some adaptations to combat the biggest problems. Most parties, however, supported more radical alternatives. The left side of the political spectrum wanted to create a legal or decriminalized way to supply cannabis to coffeeshops. Some conservative parties, on the other hand, desired a move towards a more prohibitionist system. Both these alternatives had their limitations: they could not take away all problems. Therefore, a political party's choice for one alternative over the others reflected what problems it saw as most pressing.

Repression

One alternative to the tolerance policy was to move towards a more repressive system. Different variations of this alternative were proposed. Firstly, total prohibition: this would consist of ending decriminalization altogether, and enforcing the prohibition on using and selling cannabis. A move toward total prohibition did not have many proponents in parliament: this position was only championed in its extreme form by the small Christian democrat parties SGP, RPF and GPV (in total 7 seats in 1994-1998, 8 in 1998-2002).¹¹⁷ They emphasized the dangers of cannabis and rejected the principle of 'gedogen' as hypocrisy. They also called into question the separation between hard drugs and soft drugs, stating that all drugs should be prohibited.¹¹⁸ This was motivated by their strong Christian beliefs. In 1996 the SGP summarized its position on drugs as follows: '(...) back to the blessed frameworks and connections of the Word of God and no flight into sinful behavior that destroys body and mind.'¹¹⁹ The GPV, meanwhile, had little hope that their crusade against drug use would actually succeed, but '(...) even if this battle cannot be won, it must be fought'.¹²⁰

While total prohibition did not have many supporters, a more nuanced version of this alternative was espoused by the CDA, which was the largest opposition party in both Purple I and II, with around one fifth of the seats in parliament.¹²¹ The CDA was not willing to do away with the tolerance policy altogether: they still felt that the separation of soft drugs and

¹¹⁷ Parlement.com, 'Tweede Kamerverkiezingen 1998' https://www.parlement.com/id/vh8lnhronvx1/tweede_kamerverkiezingen_1998, consulted 13-3-2024.

¹¹⁸ *Handelingen II* 1993/94, nr. 91 (13-9-1994), 91-6068 (GPV), 91-6070 (RPF); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 64-65 (RPF), 65-66 (SGP), 67 (GVP); *Handelingen II* 1999/2000, 26800-VI, nr. 17 (3-11-1999), 17-1197 (RPF).

¹¹⁹ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 66.

¹²⁰ *Ibidem*, 67.

¹²¹ Parlement.com, 'Tweede Kamerverkiezingen 1998' https://www.parlement.com/id/vh8lnhronvx1/tweede_kamerverkiezingen_1998, consulted 13-3-2024.

hard drugs had led to positive results. But they felt like the coffeeshops were an undesirable phenomenon that had to be done away with. In essence, they wanted to restore the tolerance policy to how it had originally been intended in 1976. The CDA hoped that by closing all coffeeshops, drug use would go down, and cannabis-related nuisance and crime would be reduced.¹²² Moreover, the Netherlands' cannabis policy would be more in line with the rest of Europe, leading to better international relations.¹²³ As the CDA and the proponents of a more strongly prohibitive system did not even come close to having a majority in parliament, their plans did not have a chance of being implemented during the purple governments' reign. Therefore, they could do little more than criticize the existing policy and the attempts to liberalize it. The Dutch political situation was not receptive to a change towards a more prohibitive model.

Legalization or further decriminalization

The Christian democrat parties and the AOV felt that the tolerance policy had gone too far, and that that was the cause of the problems surrounding cannabis policy. The left side of the political spectrum held the opposite view: they thought that the tolerance policy did not go far enough. They felt that as long as there was no legal or decriminalized way to supply cannabis to coffeeshops, the problem of organized crime could not be solved.¹²⁴ Additionally, according to D66, bringing coffeeshops into a legal framework would also make combating nuisance easier.¹²⁵

The whole left side of the political spectrum, that is SP, GroenLinks, PvdA and D66, supported such a move towards liberalization. Together, these parties had 68 seats in 1994, and 75 seats in 1998: just one seat short of a majority.¹²⁶ Moreover, within the coalition, PvdA and D66 parliamentarians outnumbered their colleagues from the VVD. There were some differences between the exact goals of the left-wing parties. GroenLinks and D66 wished full legalization of cannabis, while the PvdA was more cautious, proposing to merely 'regulate', 'decriminalize' or 'regularize' the production of cannabis so coffeeshops could be supplied non-criminally.¹²⁷ These differences did not split the progressive bloc, however. All

¹²² For instance: *Handelingen II* 1994/95, 23834, nr. 11 (18-10-1994), 11-475; *Handelingen II* 1994/95 nr. 39 (24-1-1995), 39-2702 / 39-2703; *Handelingen II* 1995/96 nr. 2 (20-9-1995), 2-11 / 2-12.

¹²³ *Kamerstukken II* 1994/95, 19326, nr. 95 (14-11-1994), 4; *Handelingen II* 1994/95, 23900-X, nr. 26 (23-11-1994), 26-1674.

¹²⁴ Examples: *Handelingen II* 1993/94, 23047, nr. 33 (7-3-1994), 33-15 (GroenLinks); *Handelingen II* 1995/96 nr. 2 (20-9-1995), 2-12 (D66); *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 12, 17 (PvdA), 69 (SP).

¹²⁵ D66, *Ruimte voor de toekomst: verkiezingsprogramma Democraten 66*, 1994, 39.

¹²⁶ Parlement.com, 'Tweede Kamerverkiezingen 1998'

https://www.parlement.com/id/vh8lnhronvx1/tweede_kamerverkiezingen_1998, consulted 13-3-2024.

¹²⁷ Groenlinks/Henk Krijnen et al, *Groenlinks: verkiezingsprogramma voor de Tweede Kamer en Europees Parlement 1994-1998*, Amsterdam 1993, 62-63; PvdA, *Wat mensen bindt: Partij van de*

left-wing parties shared the ambition to solve the 'backdoor problem' by creating a legal or decriminalized way for coffeeshops to be supplied, and depriving criminals of their source of income.

1.3 Failure of liberalization

The inauguration of the new progressive government seemed to offer the perfect policy window for a significant liberalization of cannabis policy. All parliamentarians agreed that the existing tolerance policy was flawed, and the issue of cannabis policy reform was high on the new government's agenda. Two possible alternatives were put forward: prohibition or a total legalization or decriminalization of cannabis. The political situation seemed quite favorable for the alternative of liberalization: there was almost a majority, D66 had ministers on key posts, and progressive parties had a majority in the coalition. However, three main factors obstructed the joining of the streams: international law, international pressure and opposition from the VVD.

International law

As part of its exploration of options for a new drug policy, the first Purple government had to find out whether the total legalization of cannabis would cause the Netherlands to be in breach of its international legal obligations. The government asked J.J. Schutte, director at the legal service of the Council of the European Union and former professor of international criminal law at the University of Amsterdam, for his judgment. His conclusion was devastating: legalizing cannabis would cause the Netherlands to be in violation of several international treaties. The most important was the Single Convention on Narcotic Drugs, signed in 1961. This convention obliges member states to forbid possession, trade and cultivation of certain drugs, like cannabis, unless this serves scientific and medical purposes.¹²⁸ Schutte did not think that legalizing cannabis would fall under such a scientific or medical purpose.¹²⁹ This conclusion was shared by the International Narcotics Control Board, which had already warned the Netherlands that by legalizing cannabis, it would indeed violate the Single Convention.¹³⁰ While it would theoretically be possible for the

Arbeid verkiezingsprogramma 1994-1998, 1994, 72-73; D66, *Ruimte voor de toekomst: verkiezingsprogramma Democraten 66*, 1994, 39.

¹²⁸ Robin Hofmann, 'The 'Total-Legalization' of Cannabis in Germany: Legal Challenges and the EU Free Market Conundrum', *European Journal of Crime Criminal Law and Criminal Justice* 31:2 (2023), 173-196, 178.

¹²⁹ 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II 1994/95*, 24 077, nrs. 2-3, 69.

¹³⁰ Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 288.

Netherlands to withdraw from the Single Convention and re-join with the reservation that cannabis could be made legal in the Netherlands, this would be made impossible if more than one third of the signatory states would oppose this move. Schutte thought it quite likely that enough states would indeed oppose such a move.¹³¹

Further complicating the matter, the Convention Implementing the Schengen Agreement, signed in 1990, required Schengen states to fully comply with the Single Convention.¹³² Therefore, disregarding or leaving the Single Convention would have severe consequences. The Netherlands would no longer comply with the legal framework of the Schengen zone, which could lead to the reinstating of trade-hampering border controls by the Netherlands' neighbors. Schutte further found that there was no possibility for the Netherlands to withdraw from Convention Implementing the Schengen Agreement and re-join with the reservation that cannabis would be legal in the Netherlands.¹³³ In conclusion, Schutte's advice showed that legalization of cannabis was not possible under the Netherlands' international legal obligations. Changing these obligations would be a complicated process, with enormous economic and diplomatic consequences.

Schutte's advice was an important setback for pro-liberalization parties. But it did not kill all hope for a decriminalized or legalized cannabis supply chain. GroenLinks parliamentarian Mohamed Rabbae continued to believe that legalization was possible under international law. He gave his own interpretation of the Single Convention, and concluded that strictly controlled cannabis production, without any 'leakage' across the border, was permissible.¹³⁴ However, he did not mention the other treaties, and his analysis did not convince other parliamentarians. The PvdA, on the other hand, did accept that full legalization was impossible, but still believed that a decriminalized supply system would not violate international law. The social democrats held that since the tolerance policy did not breach the Netherlands' international obligations, extending it to the supply side should also be possible.¹³⁵ The CDA and VVD, however, held that such a move would also go against international law.¹³⁶ In conclusion, Schutte's report did not establish full consensus about the possibilities under international law. However, the report made it very clear that international law made liberalization an uncertain and risky option.

¹³¹ 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 69.

¹³² Schengen agreement article 71; 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 65.

¹³³ 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 70.

¹³⁴ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 59.

¹³⁵ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 18.

¹³⁶ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 30 (CDA), 47 (VVD); *Kamerstukken II 2000/01*, 24077, nr. 88 (20-6-2001), 3 (CDA).

International pressure

That cannabis policy liberalization would indeed be risky and uncertain was also emphasized by a second factor: international pressure. As discussed earlier, neighboring countries felt that their prohibitionist drug policies were undermined by the Netherlands. The process of European integration, and the opening of borders as a result of the Schengen treaty, made this problem more acute.¹³⁷ Could a unified Europe deal with such a divergent cannabis policy?

This would have been a difficult problem at any time, but in 1995, as the new drug report was prepared, it became far more acute. In May 1995, Jacques Chirac won the presidential elections in France. In his previous position as mayor of Paris, he had already condemned the Dutch drug policy several times.¹³⁸ When he started his first tenure as president, he intensified his criticism, and also started applying pressure. France refused to abolish border controls on its northern border, as it was supposed to do under the Schengen agreement. Chirac claimed that a majority of the drugs used in northern France were imported from the Netherlands, and stated that the border controls were necessary for intercepting drug shipments.¹³⁹ Relations between France and the Netherlands deteriorated quickly because of mutual irritations.¹⁴⁰ In essence, Chirac's criticism was not directed at the plans for liberalization, but at the existing cannabis policy. But if the existing policy was already too liberal for the French president, it was clear that more liberalization would not be appreciated.

As pointed out earlier, progressives and conservatives looked at the problem of international pressure in very different ways, and they proposed different ways to react to it. Progressive parliamentarians did not see the foreign criticism as valid, and felt that the Dutch drug policy should not be dictated by foreign concerns.¹⁴¹ The other parties, however, held that the foreign criticism should not be ignored. The biggest conservative opposition party, the CDA, admitted that Chirac might have some disingenuous motives for his criticism, but held that the international criticism was largely justified. They urged the Dutch government to

¹³⁷ Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 263; Jack Wever, *Geschiedenis van de Nederlandse Drugsbestrijding (1961-2011): Het Dirty Harry-Probleem*, dissertation 2020, 268-269.

¹³⁸ Hans Ossebaard and Govert van de Wijngaart, 'Purple haze: the remaking of Dutch drug policy', *International Journal of Drug Policy* 9 (1998), 263-271, 267.

¹³⁹ NRC, 'Parijs: drugsbeleid Nederland noopt tot uitstel Schengen', 29-6-1995; NRC, 'Juppé: open grens pas na afspraken over drugs', 13-2-1996.

It is unclear when exactly this situation ended. According to the following article, the border controls were gradually abandoned: NRC, 'Frankrijk is een ander land geworden', 18 december 1999.

¹⁴⁰ NRC, 'Chirac en Kok', 1-3-2000.

¹⁴¹ *Kamerstukken II 1994/95*, 19326, nr. 118 (22-6-1995), 8 (D66); *Handelingen II 1995/96* nr. 2 (20-9-1995), 2-79/2-79 (D66, GroenLinks); *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 20 (PvdA).

lose its arrogant tone, and to consider that other countries might also have a point.¹⁴² The VVD agreed that the international criticism should be taken seriously, though they largely disagreed with it.¹⁴³

Although progressive opposition parties like SP and GroenLinks kept repeating that it was an outrage that a foreign government dictated the Dutch drug policy, the government could not ignore the international pressure. As D66 minister of Justice Sorgdrager said in 1998: '(...) one need not have any illusions; there is no point in starting the discussion about anything that even resembles legalization or even liberalization of the use of soft drugs from the Netherlands.'¹⁴⁴ In the face of the barrage of French pressure, progressive parties found themselves defending the tolerance policy they wanted to replace. This is evident from a discussion on the progress of drug policy held in January 1997. In this discussion GroenLinks parliamentarian Rabbae, the most avid proponent of cannabis legalization, 'noted that the Netherlands has been put on the defensive since Chirac's interventions. One should be happy that [the policy which] exists in the Netherlands can be maintained. That has become the maximum option, so to speak.'¹⁴⁵

Opposition from the VVD

1996: reactions to the new cannabis policy

Faced with the twin obstacles of international law and international pressure, the coalition was divided about what to do. The VVD was most strongly against continuing efforts to liberalize cannabis policy. Even outside of the international problems, the conservative liberals were very hesitant about liberalization. They feared an increase of drug tourism, drug trade and organized crime. If any liberalization were to be implemented, it should be done very carefully and only if it could be done together with other countries.¹⁴⁶ Though the party still supported legalization in principle, D66 agreed with this assessment. It held that cannabis legalization was still the only logical outcome in the long run, but agreed that because of the difficult international situation, cannabis policy liberalization could not be done unilaterally.¹⁴⁷

Unlike D66, the PvdA was not willing to give up the fight yet. PvdA parliamentarian Van Oven proposed a parliamentary motion calling for a decriminalized system of cannabis

¹⁴² *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 32.

¹⁴³ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 40, 47.

¹⁴⁴ *Handelingen II 1997/98*, 25324, nr. 71 (8-4-1998), 71-5289.

¹⁴⁵ *Kamerstukken II 1996/97*, 24077, nr. 43 (30-1-1997), 11.

¹⁴⁶ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 53-54.

¹⁴⁷ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 55-56.

production and supply to coffeeshops.¹⁴⁸ In doing this, the social democrats went against their coalition partners, especially the VVD, which was opposed to any extension of the tolerance policy. While D66 was sympathetic to the idea, it was unwilling to support the motion because of international concerns, and the lack of political support in parliament.¹⁴⁹ In the end, the proponents of cannabis policy liberalization needed the VVD's support to get a majority, and it was very clear that the VVD would not give it. The political situation, both in the Netherlands and internationally, prevented the three streams from joining. The policy window for cannabis policy turned out to be closed for liberalization.

2000: The motion that brought no motion

It seemed that with the first purple government's decision not to move towards legalization or decriminalization, the chance for such a reform had passed for the time. In the government agreement of the second purple government, formed in 1998, PvdA, D66 and VVD agreed that the main aspects of the drug policy would not be changed.¹⁵⁰ Parties in favor of cannabis policy liberalization had a larger share of the parliamentary seats after the 1998 elections, but were still one seat short of having a majority. Meanwhile, the influence of pro-liberalization party D66 in the cabinet had decreased after it had lost 10 seats in the elections. The social liberals lost control of the ministry of Justice to the VVD. The international situation had also not become much more favorable. Following extensive talks, relations with France had improved, and the barrage of criticism had died down.¹⁵¹ But Chirac was still president, and had not changed his perspective on drugs: he would undoubtedly oppose any move towards liberalization.

All in all, the political situation was not very favorable to a liberalization of cannabis policy. Still, in 1999 and 2000, decriminalization or legalization of cannabis production and supply was on the policy agenda again. In 1999, a group of mayors had reported to the media that a solution for the 'back door problem' was urgently needed, in order to sever the coffeeshops' ties to the criminal world, and ensure the safety of the sold cannabis.¹⁵² This led to questions in parliament, and VVD minister of Justice Benk Korthals promised to release a report outlining the nature of the problem and possible solutions.¹⁵³ In April 2000, the minister's report 'The path to the back door' was sent to parliament. It concluded that a decriminalized cannabis supply system would not free up much capacity of enforcement

¹⁴⁸ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 45.

¹⁴⁹ *Kamerstukken II* 1995/96, 24077, nr. 34 (20-3-1996), 56

¹⁵⁰ 'Regeerakkoord 1998', *Kamerstukken II*, 1997/98, 26024, nr. 10, 47.

¹⁵¹ NRC, 'Chirac en Kok', 1-3-2000.

¹⁵² NRC, 'Gemeenten willen teelt wiet gedogen', 11-10-1999.

¹⁵³ *Handelingen II* 1999/2000 nr. 10 (12-10-1999), 10-591 (CDA); 10-593 (toezegging minister Korthals); 'Het pad naar de achterdeur', *Kamerstukken II* 1999/2000, 24 077, nr. 75.

agencies, and that such a system would result in the Netherlands breaching its international legal obligations. Therefore, the minister announced that he would not allow the creation of a regulated cannabis supply chain.¹⁵⁴

Despite being part of the coalition, PvdA and D66 did not want to accept this conclusion. 21 June 2000, PvdA parliamentarian Thanasis Apostolou proposed a parliamentary motion calling on the government to 'promote the development of guidelines (...) on the basis of which the production of Dutch weed and its supply to coffeeshops is arranged'.¹⁵⁵ In essence, he called for a system of decriminalized production and supply of cannabis. He got support from all reform-minded parties. This included D66, unlike in 1995. Apparently the social liberals found it easier to support such a motion when it did not go against the policies of a minister of their own party. Under normal circumstances, Apostolou's motion would have received the 75 votes of the reform-minded parties, and failed just one vote short of a majority. But not all parliamentarians were present at the time of voting, and the progressive bloc had one more parliamentarian present. So with 73 to 72 votes, Apostolou's motion was passed.¹⁵⁶

Was this narrow progressive victory the beginning of a huge shift in the Dutch cannabis policy? Under unwritten constitutional law, parliamentary motions are supposed to be carried out, as D66 and PvdA reminded the government.¹⁵⁷ However, no such thing was done. Minister Korthals decided to ignore the motion. He explained that he had good reasons for it. Carrying out this motion would, according to him, bring the Netherlands in breach of international law, and would have severe repercussions for the Netherlands' international position.¹⁵⁸ Moreover, the motion did not reflect the majority opinion of the parliament under normal circumstances. As the SGP stated, the only reason the motion had been passed was because a parliamentarian had left: in normal circumstances, there was no parliamentary support for decriminalization.¹⁵⁹ While the PvdA was disappointed and aggrieved by this course of events, the social democrats were not willing to blow up the coalition.¹⁶⁰ In the end, this incident was not enough to change the political situation in favor of cannabis policy liberalization.

¹⁵⁴ 'Het pad naar de achterdeur', *Kamerstukken II* 1999/2000, 24 077, nr. 75, 15-16.

¹⁵⁵ *Handelingen II* 1999/2000, nr. 89 (21-6-2000), 89-5771 / 89-5772.

¹⁵⁶ *Handelingen II* 1999/2000, nr. 91 (27-6-2000), 5876.

¹⁵⁷ *Kamerstukken II* 2000/01, 24077, nr. 88 (20-6-2001), 3-4 (D66); *Handelingen II* 2000/01, nr. 94 (3-7-2001), 94-5888 (PvdA).

¹⁵⁸ *Kamerstukken II* 2000/01, 24077, nr. 88 (20-6-2001), 7.

¹⁵⁹ *Kamerstukken II* 2000/01, 24077, nr. 88 (20-6-2001), 6-7 (SGP); *Handelingen II* 2000/01, nr. 94 (3-7-2001), 94-5890/94-5891 (ChristenUnie).

¹⁶⁰ *Kamerstukken II* 2000/01, 24077, nr. 88 (20-6-2001), 1; *Handelingen II* 2000/01, nr. 94 (3-7-2001), 94-5888.

Treaties and objections

In 1996, D66 parliamentarian Thom de Graaf said: ‘standing between dream and action are treaties and foreign objections’.¹⁶¹ Indeed, these two factors played a crucial role in preventing policy change. It is likely that without these two blocking factors, the skeptical VVD could have been persuaded by the PvdA and D66 to support a regulated cannabis supply system. As it stood, even a D66 minister decided the costs of cannabis policy change were too high. During the reign of the two ‘purple’ cabinets, the three streams of Kingdon’s model were close to being joined. Problems with the current cannabis policy were identified and the issue of cannabis policy was high on the agenda. Legalization or decriminalization were proposed as alternatives, and the internal political landscape was quite close to being receptive to this alternative. This became especially clear in 2000, when a parliamentary motion calling for decriminalization of cannabis production and supply was narrowly accepted. But, as politicians kept repeating: the Netherlands is not an island.¹⁶² The country had to take its neighbors into account, or risk severe diplomatic and economic consequences. In de Graaf’s deepest fantasies, the navy would be sent to Le Havre to ‘take measures against France’.¹⁶³ But even fervent proponents of liberalization like him had to admit that the French criticism could not simply be ignored.

1.4 A stricter tolerance policy

The political situation was not receptive to the two most far-reaching alternatives to the existing cannabis policy: prohibition or further liberalization. Instead, a third alternative was chosen: continuing the tolerance policy, while making it significantly stricter. At first sight, this does not seem like a very logical move for a minister who originally speculated about legalizing cannabis. Three factors help explain this move, though. Firstly, PvdA and D66, though proponents of liberalization, agreed that the problems of nuisance and crime surrounding coffeeshops had to be solved. Even if their plans for cannabis policy liberalization would have succeeded, these parties would likely have supported increased regulations for coffeeshops. With liberalization out of the window, it was the only solution remaining to them. Secondly, the barrage of foreign criticism prompted the government to make a limited concession, lowering the amount of cannabis that people were allowed to possess. Thirdly, political factors played a role: D66 and PvdA needed the VVD’s support, which gave the VVD a strong bargaining position.

¹⁶¹ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 50.

¹⁶² Examples: *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 19 (PvdA); *Handelingen II 1999/2000*, nr. 89 (21-6-2000), 89-5772 (CDA), 89-5774 (VVD minister).

¹⁶³ *Kamerstukken II 1994/95*, 19326, nr. 118 (22-6-1995), 8.

A third alternative

Combating cannabis-related crime

The first problem that still remained to be solved was cannabis-related crime. This was a very important topic for pro-liberalization parties: it was their main argument for creating a legal or decriminalized supply system for coffeeshops. But a solution for the 'back door problem' was not forthcoming because of international law, international pressure and a lack of political support. With legalization or regulation of the cannabis growing sector blocked, the government chose the only remaining option: increased repression. More attention to large-scale growing operations was announced, and maximum criminal penalties for the growing of cannabis were increased from 2 to 4 years.¹⁶⁴

The coffeeshops would have to continue to be supplied with illegally grown cannabis, and the government knew it. It seems somewhat paradoxical, then, that they increased repression of the cannabis growing sector. This choice can be explained by their fear that organized criminals would expand their influence, and turn the Netherlands into an exporter of cannabis. By the mid-1990s, cannabis growing in the Netherlands had become big business, and it was highly profitable.¹⁶⁵ The government wanted to curb this development. They feared that the criminals would increase the psychoactive properties of the cannabis, potentially endangering public health. Moreover, allowing the Netherlands to become a production- and export nation for cannabis would lead to more international criticism.¹⁶⁶

Moreover, the purple government still harbored the hope that about 35000 small-scale 'home growers', each with only a few plants, could supply the coffeeshops instead of the large-scale growers.¹⁶⁷ Partly because of this hope, only large-scale growing operations would get priority from enforcement agencies. Cultivating only a few plants would be tolerated.¹⁶⁸ In retrospect, the hope that coffeeshops would be supplied by thousands of individual growers seems naïve, and this hope did not become reality.¹⁶⁹ What remained was the same old situation that Sorgdrager had denounced as 'hypocritical': cannabis could be sold, but not supplied or grown. Ending this situation, the root cause of cannabis-related

¹⁶⁴ 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 50.

¹⁶⁵ Jack Wever, *Geschiedenis van de Nederlandse Drugsbestrijding (1961-2011): Het Dirty Harry-Probleem*, dissertation 2020, 295.

¹⁶⁶ 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 49-50.

¹⁶⁷ *Ibidem*, 49.

¹⁶⁸ *Ibidem*, 57.

¹⁶⁹ Jack Wever, *Geschiedenis van de Nederlandse Drugsbestrijding (1961-2011): Het Dirty Harry-Probleem*, dissertation 2020, 296.

crime, proved to be impossible for the time being. Instead, the purple government tried to at least limit the negative effects of this ‘hypocritical’ policy.

Regulating coffeeshops

Continuity and Change stated that ‘coffeeshops had proven their right to exist’: they, the report held, fulfilled an important role in keeping soft drug users away from hard drug sellers. To mark this formal recognition, prosecution guidelines would allow coffeeshops to keep 500 grams of cannabis in storage.¹⁷⁰ Up to then, coffeeshops, just like an individual citizen, could only keep 30 grams, which was insufficient to run a shop with.¹⁷¹ But this formal recognition had a flipside: the coffeeshops would now have to conform better to the regulations. And these regulations did not give coffeeshops very much room. The 500-gram rule was an example of that. While obviously more favorable than the 30 gram rule, 500 grams was not sufficient for larger coffeeshops: they would have to keep stashes nearby, and be resupplied multiple times each day.¹⁷²

As local authorities were the ones primarily responsible for the implementation of cannabis policy, a large part of the purple government’s new cannabis policy consisted of encouraging and facilitating their enforcement efforts. For instance, *Continuity and Change* lauded the increased efforts of many municipalities to enforce existing local regulations to reduce nuisance.¹⁷³ But the report went further. It encouraged plans by some municipalities, like Amsterdam, to ‘sanitize’ the coffeeshops by closing half of them. *Continuity and Change* held that such significant reductions of the number of coffeeshops would make problems like nuisance more manageable.¹⁷⁴ Municipalities, in consultation with the local police and the public prosecutor’s office, would even be able to disallow the establishment of coffeeshops in their municipality if they judged that there was ‘no real demand’ for cannabis.¹⁷⁵

To facilitate these efforts by municipalities, *Continuity and Change* made it significantly easier to close coffeeshops. *Continuity and Change* already announced the

¹⁷⁰ ‘Het Nederlandse drugsbeleid: continuïteit en verandering’, *Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 42; Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 290.

¹⁷¹ Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 229.

¹⁷² Kurt van Es, *De Coffeeshop: de opmerkelijke geschiedenis van een Hollands fenomeen*, Amsterdam 1997, 71.

¹⁷³ ‘Het Nederlandse drugsbeleid: continuïteit en verandering’, *Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 38.

¹⁷⁴ ‘Het Nederlandse drugsbeleid: continuïteit en verandering’, *Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 38; Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024, 281.

¹⁷⁵ ‘Het Nederlandse drugsbeleid: continuïteit en verandering’, *Kamerstukken II 1994/95*, 24 077, nrs. 2–3, 56.

development of more legal instruments to retract coffeeshops' licenses.¹⁷⁶ But a more potent new instrument was the 'Wet Damocles', which was accepted in parliament in 1998 and came into force in 1999. This law gave mayors the option of closing any publicly accessible location where illegal drugs were produced or sold. By definition, this included coffeeshops. Therefore, the law would serve as a 'sword of Damocles': coffeeshops could be closed any moment. This was meant to assure that coffeeshops would comply with the existing rules more readily.¹⁷⁷ The combination of the new national guidelines and harsher municipal policies resulted in a dramatic decrease of the number of coffeeshops in the Netherlands. Their number went from an estimated number of about 1200 nationwide in 1995, to 846 in 1999.¹⁷⁸

Appeasing the neighbors

Another pressing problem remained: international pressure and the Netherlands' international reputation. Just abandoning the plans for liberalization would not be enough to appease other countries: the criticism was largely aimed at the existing policy. From minister Sorgdrager's statements in parliament, it is clear that the purple government harbored significant frustrations about the foreign criticism.¹⁷⁹ Despite these feelings, the purple government could not simply ignore international criticism. The French government already refused to open its northern border as the Schengen agreement required; perhaps it would go even further. And minister of Justice Sorgdrager (D66) noted that the Netherlands was already facing broader diplomatic problems in the European Union: '(...) every forum at European level consistently attempts to push the Netherlands one step further in the direction of a policy that we actually do not really want.'¹⁸⁰ Moreover, perhaps not all foreign demands were seen as entirely unjustified. That, at least, is the impression *Continuity and change* gives, which held that 'The Dutch government can be expected to make the necessary efforts to minimize the export of soft drugs purchased in shops. Neighboring foreign countries are rightly calling the Netherlands to account for this.'¹⁸¹

Faced with all this foreign criticism, the purple government tried to keep the core of Dutch drug policy intact, while conceding on less crucial points. The principle of 'gedogen' was maintained, and there would be no end to the coffeeshops. But there would be a major

¹⁷⁶ 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II* 1994/95, 24 077, nrs. 2–3, 38.

¹⁷⁷ R.A. Noorhoff, *Artikel 13b Opiumwet: wegwijs gedogen en handhaven*, Deventer 2011, 8-10.

¹⁷⁸ 'Het pad naar de achterdeur', *Kamerstukken II* 1999/2000, 24 077, nr. 75, 3.

¹⁷⁹ For instance: *Handelingen II* 1995/96 nr. 4 (26-9-1995), 4-200/4-201.

¹⁸⁰ *Kamerstukken II* 1995/96, 23490, nr. 60 (26-11-1996), 25.

¹⁸¹ 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II* 1994/95, 24 077, nrs. 2–3, 12.

concession designed to reduce cross-border movement of marijuana: the maximum amount of cannabis that could be sold was reduced from 30 grams to 5 grams per transaction.¹⁸² 30 grams, minister Sorgdrager explained to parliament, was far more than the average Dutch cannabis user bought at one time: this would not make a difference for them. However, it would make it harder for a foreigner to take a whole stash home from the Netherlands.¹⁸³ This had the added benefit of hopefully reducing drug tourism, and related nuisance.¹⁸⁴

Political receptiveness

Progressive support for regulation

Why did D66 and PvdA support all these measures, when they originally wanted to liberalize cannabis policy? The answer is twofold. Firstly, liberalization was no longer available as a solution. D66 had hoped that cutting the ties between coffeeshops and the criminal world would decrease nuisance.¹⁸⁵ It is likely, however, that if the plans for liberalization would have succeeded, they would have been accompanied by stricter regulations for coffeeshops. Regulation of the 'back door' was primarily a solution for the crime problem; it seems unlikely that it would have fully solved the nuisance problem.

This brings us to the second factor. The fact that D66 and PvdA supported cannabis policy liberalization did not mean that they fully rejected all repressive measures. As mentioned before, they, too, held that coffeeshop-related nuisance had become too much. In their 1994 election manifestos, both PvdA and D66 stated that nuisance related to coffeeshops should be combated.¹⁸⁶ PvdA explicitly stated that 'The more stringent public order policy with regard to coffee shops, aimed at controlling the trade in hard drugs, crime and safety problems and controlling nuisance for local residents, must be continued.'¹⁸⁷ In parliamentary debates, the PvdA repeated this stance.¹⁸⁸ D66 spokesman Thom de Graaf proudly proclaimed: 'We don't need France to deal with our nuisance. That initiative was already taken by the cabinet itself long before Mr Chirac started barking!'¹⁸⁹

¹⁸² 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II 1994/95*, 24 077, nrs. 2-3, 57.

¹⁸³ *Kamerstukken II 1995/96*, 24077, nr. 35 (27-3-1996), 25.

¹⁸⁴ 'Het Nederlandse drugsbeleid: continuïteit en verandering', *Kamerstukken II 1994/95*, 24 077, nrs. 2-3, 40-41.

¹⁸⁵ D66, *Ruimte voor de toekomst: verkiezingsprogramma Democraten 66*, 1994, 39.

¹⁸⁶ PvdA, *Wat mensen bindt: Partij van de Arbeid verkiezingsprogramma 1994-1998*, 1994, 72-73; D66, *Ruimte voor de toekomst: verkiezingsprogramma Democraten 66*, 1994, 39.

¹⁸⁷ PvdA, *Wat mensen bindt: Partij van de Arbeid verkiezingsprogramma 1994-1998*, 1994, 72.

¹⁸⁸ *Kamerstukken II 1995/96*, 24077, nr. 34 (20-3-1996), 3; *Handelingen II 1994/95*, nr. 2 (21-9-1994), 2-26.

¹⁸⁹ *Kamerstukken II 1995/96*, 24699, nr. 13 (27-11-1996), 9.

The VVD's strategic position

When reading the sections on cannabis policy, one would be forgiven to think a VVD minister was responsible for the creation of this report. It fit excellently within their preferred cannabis policy: it maintained the tolerance policy while trying to combat negative side effects. Partly, this was a coincidence: with liberalization blocked as a solution, pro-liberalization parties turned to the stricter tolerance policy that the VVD preferred. But the VVD's influence undoubtedly also played a role. In both tenures of the purple government, pro-liberalization parties were dependent on the VVD's support to get their reforms through. From 1994 to 1998, the VVD could theoretically even have chosen to band together with other conservative parties to get repressive reforms through. This gave the VVD significant power, and this might have influenced the end result. In the debate about *Continuity and change* in March 1996 D66 parliamentarian Wolffensperger showed that he was aware of this power balance: 'I said in my first term that I would like a lot of things, but that I am dependent, among other things, on the international situation and on the majority opinion in this House.'¹⁹⁰

A window for repression

While the political climate was not receptive to the liberalizing reforms of legalization or decriminalization in the period 1994-1998, the streams of policy reform did line up for another alternative: a stricter tolerance policy. Some repressive measures would likely have been implemented even if the government's plans for liberalization had succeeded. The combating of nuisance and cannabis-related crime were too high on the policy agenda to ignore, also for pro-liberalization parties. Secondly, international pressure continued to make itself felt, even without increased liberalization. The Netherlands, with its coffeeshops and liberal attitude towards drugs, had the reputation of a Sodom and Gomorrah. Thirdly, at the time the new policy was created and implemented, the political power balance in parliament favored repression, even if a majority within the coalition did not.

1.5 Conclusion: Purple policy change

When it came to cannabis policy, the purple governments were faced with two important problems. Firstly, the paradoxical situation that coffeeshops had no legal way to be supplied, which stimulated organized crime. Secondly, the widespread concerns about the nuisance that the coffeeshops caused. Ideally, the PvdA and D66 wanted to solve the first problem by

¹⁹⁰ *Kamerstukken II 1995/96*, 24077, nr. 35 (27-3-1996), 56.

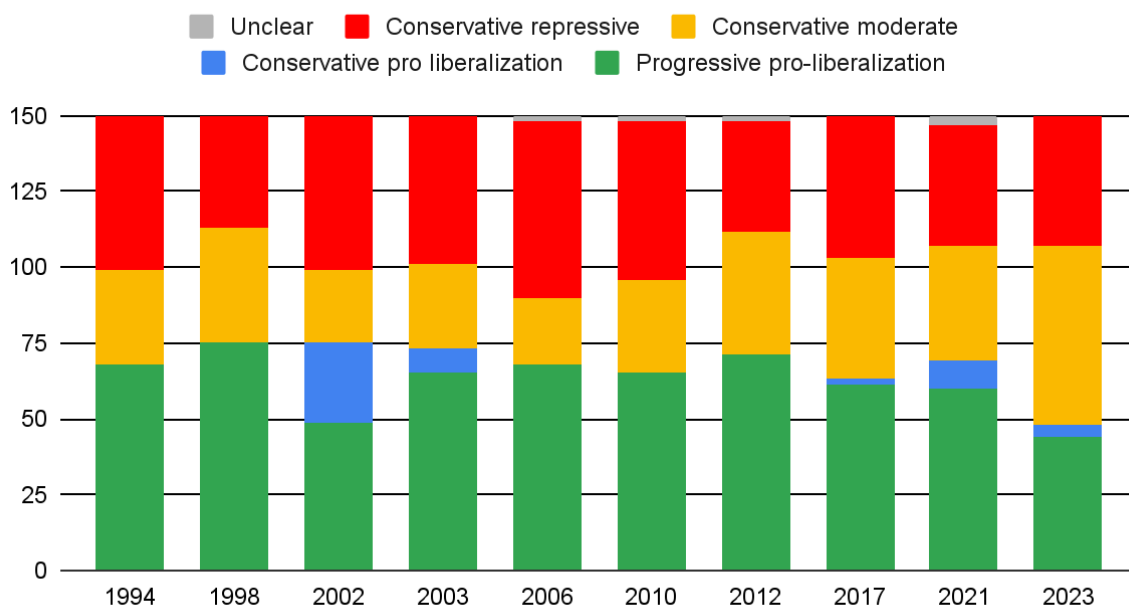
creating a legalized supply system for coffeeshops. And for a while, it seemed like they would have a decent chance of success. But the political situation turned out not to be receptive. Full legalization of cannabis would, according to a prominent legal expert, bring the Netherlands in breach of its international obligations. And unrelenting international pressure, especially from France, showed that smaller steps towards liberalization would also have a high cost. Under these circumstances, the VVD, which held the key middle position in this debate, was not prepared to back legalization or decriminalization.

But the purple governments could not afford to keep everything else the same: the issues of coffeeshop-related nuisance and crime still remained. With the road to regulation blocked, the purple governments chose to crack down on cannabis cultivation, fearing that the Netherlands would otherwise become a net exporter of cannabis. To solve the nuisance problem, the government decided to strictly regulate coffeeshops. It is highly likely that even if a decriminalized way of supplying coffeeshops had been created, it would have been accompanied by repressive measures to curb coffeeshop-related nuisance. Many of these repressive measures enjoyed broad support, even from pro-liberalization parties. The first purple government brought not one, but two policy windows. The first, leading towards full decriminalization or legalization of cannabis, closed. But the second, leading towards a more repressive continuation of the tolerance policy, was used.

2. 2002-2023 ‘Ritual dances’

In 2014, CDA politician Peter Oskam referred to the parliamentary debate about cannabis policy as a ‘ritual dance’.¹⁹¹ It was a subject which was debated time and time again, with little change in the positions of the parties. The same parties used the same arguments to defend the same ideas, giving the impression of, indeed, a ‘ritual dance’. Neither proponents of liberalization nor parties favoring repression ever got enough seats to radically reform cannabis policy. Just like during the time of the purple governments, proponents of radical change needed the support of moderate parties, but were never able to obtain it. This political gridlock is visualized in the following graphic.

Parliamentary power balance for cannabis policy reform



Graph 1: Parliamentary power balance for cannabis policy reform after each election, in the number of seats for all parties holding a certain ideological position on cannabis policy.

- *Progressive pro-liberalization parties are: SP, GroenLinks, PvdA, D66 and Partij voor de Dieren (PvdD) from 2012 onwards.*
- *Conservative pro-liberalization parties are LPF, FvD, BBB in 2021 and Ja21 in 2023.*
- *Conservative moderate parties are VVD, Denk, 50plus in 2017 and 2021 and in 2023 also CDA, NSC, BBB.*
- *Conservative repressive are CDA up to and including 2021, SGP, RPF, GPV, AOV, CD, ChristenUnie, Leefbaar Nederland and PVV.*

¹⁹¹ *Kamerstukken II 2014/15, 24077, nr. 336 (8-12-2014), 8.*

- Unclear are PvdD in 2006 and 2010, 50Plus in 2012, and Ja21 in 2021.

Source: election manifestos and statements in debates. Detailed sources and an overview of these parties' seats after each election can be found in appendix A.

Even at their peak in the period 1998 to 2003, parties which supported cannabis policy reform were one seat short of having a majority. Parties which supported some move towards repression won even less seats. This meant that both groups were dependent on the support of parties taking a moderate conservative position on cannabis policy. Up to 2017, the VVD was the only such party, and until the 2023 election, it held enough seats to sway the vote. However, the VVD proved unwilling to support either side in their demands for radical change. The party did support some significant repressive measures, but not an end to the coffeeshops; just as it supported an experiment with a decriminalized supply system for coffeeshops in 2017, while never supporting full decriminalization or legalization of cannabis. Pro-liberalization parties and pro-repression parties continued to argue, but the discussion about cannabis policy reform remained in gridlock.

The rigidity of this gridlock is puzzling, especially because so much changed. Coffeeshop-related nuisance decreased, while the threat of organized crime became more prominent. New parties, with new views on cannabis policy, entered parliament and disappeared again. There were also significant changes in the international situation: the Netherlands lost its position as the most liberal nation in terms of cannabis policy. While it would still be a risky and controversial move, the situation had arguably never been better for a move towards liberalization. So why did the Dutch parliament never manage to move beyond 'ritual dances'?

2.1 2002-2006: Opportunity, continuity

In 2002, after 8 years of 'purple' governments, support for the ruling parties PvdA, VVD and D66 had dwindled. After the 2002 elections, they went from having 97 seats to just 53. Right-wing parties profited most from this. The conservative CDA became the largest party, going from 29 seats in 1998 to 43 in 2002.¹⁹² The next four governments would be led by the CDA. This was a significant blow for pro-liberalization parties: the CDA strongly opposed any liberalization of cannabis policy: it even had the ambition to close all coffeeshops in time.¹⁹³ However, surprisingly, the pro-liberalization movement had not quite run out of steam. 2002 saw the unexpected rise of the new political party LPF, which, though right-wing, supported

¹⁹² Parlement.com, 'Tweede Kamerverkiezingen 2002', https://www.parlement.com/id/vh8lnhrp8wsx/tweede_kamerverkiezingen_2002, consulted 10-4-2024.

¹⁹³ CDA, *Betrokken samenleving, betrouwbare overheid: verkiezingsprogramma 2002-2006*, 2002, 36.

cannabis legalization. And in 2005 and 2006, the VVD actually seemed close to supporting experimentation with a decriminalized system for supplying coffeeshops. Could these right-wing parties bring a breakthrough in cannabis policy?

Problem recognition

First of all, what problems were recognized with cannabis policy? Firstly, the concept of 'gedogen' still gave rise to controversy. The new right-wing populist LPF actually made ending all instances of 'gedogen' one of its most important campaign points in 2002.¹⁹⁴ And conservative parties CDA, SGP and ChristenUnie (the merger of GPV and RPF) still felt that tolerating coffeeshops was an implicit condoning of drug use, and that coffeeshops should not be allowed to exist in the vicinity of schools.¹⁹⁵ However, there were some developments regarding coffeshop-related nuisance and organized crime.

Nuisance

The issue of coffeshop-related nuisance presented a mixed picture. On the one hand, it seemed to decrease somewhat. The percentage of people experiencing drug-related nuisance, including nuisance from hard drugs and illegal sale of soft drugs, dropped from 7,6 percent in 1997 to 5,2 percent in 2006.¹⁹⁶ Sadly, there are no separate statistics for coffeshop-related nuisance. However, it is highly likely that the 'sanitization' of coffeshops that was started under the purple government contributed to this. After all, the number of coffeshops had decreased significantly, from an estimated 1200 in 1997 to 719 in 2006.¹⁹⁷ This decrease in numbers alone must have made a significant difference. The problem of drug tourism, on the other hand, did not abate. Especially in towns near the southern border, the availability of soft drugs continued to attract foreigners, causing traffic problems and complaints about noisy and rude customers.¹⁹⁸ However, the nuisance in those towns was not only related to coffeshops: the foreign buyers also attracted non-condoned sellers of soft- and hard drugs.¹⁹⁹

¹⁹⁴ Lijst Pim Fortuyn, *Zakelijk met een hart* (verkiezingsprogramma 2002), 2002, 1, 3.

¹⁹⁵ *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4700 (ChristenUnie), 78-4703-78-4704 (SGP); *Handelingen II* 2005/06, nr. 60 (21-3-2006), 60-3845 (CDA).

¹⁹⁶ Margriet van Laar and Marianne van Ooyen-Houben (eds.), *Evaluatie van het Nederlandse drugsbeleid*, Utrecht/Den Haag 2009 (WODC/Trimbos Instituut), 311.

¹⁹⁷ Nationale Drugsmonitor, *NDM Jaarbericht 2000*, 2000, 25; Margriet van Laar and Marianne van Ooyen-Houben (eds.), *Evaluatie van het Nederlandse drugsbeleid*, Utrecht/Den Haag 2009 (WODC/Trimbos Instituut), 137.

¹⁹⁸ Wim van de Donk et al., *Geen deuren maar daden: nieuwe accenten in het Nederlands drugsbeleid*, 2009 (Adviescommissie Drugsbeleid), 21.

¹⁹⁹ J. Snippe, B. Bieleman and A. Kruize, *Hektor in Venlo: monitoren drugsoverlast Venlo: Tussenmeting*, Groningen/Rotterdam 2004 (Intraval), 1.

In the 1990s, all parties agreed that the nuisance from coffeeshops was an urgent and important problem. In the period 2002-2006, the problem was less prominent in the debates, and the consensus about the seriousness of this problem broke down. Progressive parties mentioned the issue of coffeeshop-related nuisance less frequently.²⁰⁰ Conservative parties, mainly VVD and CDA, did continue to mention the problem regularly. They especially denounced the proximity of some coffeeshops to schools, and the issues with drug tourism.²⁰¹ However, VVD and CDA now seemed to recognize that coffeeshops could play a positive role in reducing nuisance. CDA minister of Justice Piet-Hein Donner wanted to reduce the number of coffeeshops, but in a careful manner in order not to cause nuisance.²⁰² And VVD spokesman Weekers stated that coffeeshops, by providing a secluded place for using drugs, reduced public nuisance.²⁰³

Organized crime

While the issue of nuisance decreased in prominence in parliamentary debates, organized crime continued to be discussed regularly. An important new development was the increase in cannabis cultivation in residential buildings. This came with significant new risks. Firstly, nuisance and danger for local residents: the plantations spread an unpleasant odor, and often involved illegal tapping of electricity, creating fire hazards.²⁰⁴ Secondly, the residential plantations threatened to interweave the illegal and legal economies. People seeking to earn some easy money rented out a room to the cannabis growers.²⁰⁵ Some parliamentarians feared that some people were forced to provide room for a plantation.²⁰⁶ However, a 2007 report found that if it even happened, it was exceptionally rare.²⁰⁷

As in the time of the purple governments, no one denied the need to do something about the threat of organized crime. But as before, the proposed solutions differed. Progressive parties continued to present the organized crime problem as the ultimate argument that the 'back door problem' needed to be solved by creating a decriminalized or

²⁰⁰ *Handelingen II* 2003/04 29200-VI, nr. 16 (28-10-2003), 16-947.

²⁰¹ For instance: *Handelingen II* 2003/04 29200-VI, nr. 16 (28-10-2003), 16-980 (ChristenUnie); *Kamerstukken II* 2003/04, 24077, nr. 137 (23-8-2004), 5 (VVD); *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4697 (VVD), 78-4706 (CDA).

²⁰² *Kamerstukken II* 2003/04, 24077, nr. 137 (23-8-2004), 11.

²⁰³ *Kamerstukken II* 2005/06, 30300 VI, nr. 65 (17-11-2005), 16.

²⁰⁴ Toine Spapens, Henk van de Bunt, Laura Rastovac, *De Wereld achter de wietteelt*, Den Haag 2007 (WODC), 87.

²⁰⁵ *Ibidem*, 55.

²⁰⁶ *Kamerstukken II* 2003/04, 24077, nr. 137 (23-8-2004), 3 (PvdA); *Kamerstukken II* 2005/06, 24077, nr. 191 (18-8-2006), 3 (VVD).

²⁰⁷ Toine Spapens, Henk van de Bunt, Laura Rastovac, *De Wereld achter de wietteelt*, Den Haag 2007 (WODC), 55-57.

legalized cannabis supply chain.²⁰⁸ Conservative parties, most notably CDA and VVD, continued to oppose this alternative, instead supporting tougher approaches to crime.²⁰⁹ Time and again, the CDA-led governments announced increased enforcement efforts.²¹⁰

2002: A conservative window?

The biggest surprise of the 2002 elections was the sudden rise of the new right-wing populist party Lijst Pim Fortuyn (LPF). This party, which had been founded three months before the elections, won 26 seats, just over a week after its leader, Pim Fortuyn, was murdered.²¹¹ The new political landscape had mixed consequences for the parliamentary power balance about cannabis policy. On the one hand, the power of the left-wing parties which had long championed cannabis policy liberalization had diminished. On the other hand, a new opportunity arose. Pim Fortuyn was a proponent of the liberalization of cannabis policy. Before he entered national politics, he already wrote an opinion piece and a column in which he argued for legalization of cannabis.²¹² He did not consider cannabis more dangerous than alcohol or tobacco, and held that people should be free to use it. Finally, Fortuyn argued that repressive drug policies did not deter drug users, and did more harm than good.²¹³ After Fortuyn's death, the LPF continued to support a liberalization of cannabis policy.²¹⁴

In the end, however, the LPF would not make any difference for cannabis policy. Firstly, even with the LPF's 26 seats, the parties in favor of cannabis policy liberalization were one seat short of a majority. Secondly, the LPF found little support for its standpoint on cannabis policy in the new coalition it formed with the VVD and CDA. In the previous years, the VVD had already revealed itself to be very critical about any liberalization of cannabis

²⁰⁸ For instance: *Kamerstukken II* 2003/04, 24077, nr. 137 (23-8-2004), 6 (GroenLinks); *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4695 (GroenLinks), 78-4709 (SP); *Kamerstukken II* 2005/06, 24077, nr. 177 (24-1-2006), 2 (PvdA).

²⁰⁹ Examples: *Handelingen II* 2002/03, nr. 65 (23-4-2003), 65-3864 (CDA minister); *Kamerstukken II* 2002/03, 24077, nr. 121 (14-7-2003), 3 (VVD); *Kamerstukken II* 2005/06, 29911, nr. 2 (4-4-2005), 11-12 (VVD and SGP); *Kamerstukken II* 2005/06, 30300 VI, nr. 65 (17-11-2005), 13 (VVD), 23 (CDA minister).

²¹⁰ 'Werken aan vertrouwen, een kwestie van aanpakken: strategisch akkoord voor kabinet CDA, LPF, VVD', *Kamerstukken II* 2001/02, 28 375, nr. 5, 10; 'Meedoen, meer werk, minder regels: Hoofdlijnenakkoord voor het kabinet CDA, VVD, D66', 2003, 2; 'Coalitieakkoord tussen de Tweede Kamerfracties van CDA, PvdA en ChristenUnie', 2006, 34.

²¹¹ Parlement.com, 'Tweede Kamerverkiezingen 2002', https://www.parlement.com/id/vh8lnhrp8wsx/tweede_kamerverkiezingen_2002, consulted 10-4-2024.

²¹² The distaste for 'gedogen' in general is visible in the election manifesto: LPF, *Lijst Pim Fortuyn: Zakelijk met een Hart*, 2002, 1; Fortuyn's personal opinion about cannabis can be seen in one of his columns: Pim Fortuyn, 'Drugsbeleid', in: Pim Fortuyn, *A hell of a job: de verzamelde columns van Pim Fortuyn*, 2003, 220-221.

²¹³ Pim Fortuyn, 'Drugsbeleid', in: Pim Fortuyn, *A hell of a job: de verzamelde columns van Pim Fortuyn*, 2003, 220-221; Pim Fortuyn, 'Geef fiscus deel van winst op soft drugs', *Leidsch Dagblad* 14-9-1994.

²¹⁴ *Kamerstukken II* 2002/03, 24077, nr. 188 (29-4-2003), 3; *Kamerstukken II* 2002/03, 24077, nr. 121 (14-7-2003), 4.

policy, and the CDA was even more ardently opposed to any such move. Together, these two parties far outnumbered the LPF. Moreover, the ministry of Justice, crucial for cannabis policy, went to CDA politician Piet Hein Donner, a strong opponent of cannabis policy liberalization.²¹⁵ Thirdly, the LPF and by extension the coalition was plagued by instability and chaos. The LPF had lost its founder and leader with the murder of Pim Fortuyn, and without him, the party fell into disunity. LPF ministers argued among themselves and with the rest of the party. After only 87 days, the VVD and CDA withdrew their support of the coalition, and the government fell.²¹⁶ In the political chaos following the murder of Pim Fortuyn and the victory of LPF, cannabis policy was not very high on the political agenda, and even if it had been, the political situation would not have been receptive to such a policy reform.

2005-2006: a 'Purple bang'

In 2003, a new cabinet was formed. This cabinet, once again led by CDA politician Jan Peter Balkenende, consisted of CDA, VVD and D66. It did not seem that the new cabinet, known as Balkenende II, would provide much opportunity for radical change in cannabis policy. Although the CDA had promised an end to the 'tolerance policy regarding drug policy and drug trafficking' in its election manifesto, any radical move towards repression would be opposed by VVD and D66.²¹⁷ A move towards liberalization seemed even more improbable. Of the coalition parties, only D66 strongly supported cannabis policy liberalization. With its 6 seats, it was outnumbered by CDA (44 seats) and VVD (28 seats). CDA politician Donner, an ardent opponent of cannabis policy liberalization, remained the minister of Justice, an excellent position to block any attempt at reform. However, surprisingly, for a few months it seemed that a step in the direction of liberalization would be taken.

The Maastricht Manifesto

In the first years of the Balkenende governments, cannabis policy was not very high on the political agenda. There were comparatively few debates about the subject, and policy change did not seem likely. But in 2005, the debate flared up again. Like in 1999, the impetus came from local governments. This time, it was the mayor of Maastricht, Gerd Leers, who started the discussion. He was faced with two big problems. Firstly, Maastricht,

²¹⁵ Donner's opposition to this was already visible in an article he wrote for the CDA party magazine in 1994: Piet-Hein Donner, 'Legalisatie van drugs?', *CDActueel* 14:2 (1994), 21.

²¹⁶ Joop van Holsteyn and Galen Irwin, 'Never a dull moment: Pim Fortuyn and the Dutch parliamentary election of 2002', *West European Politics* 26:2 (2003), 41-66, 66.

²¹⁷ CDA, *Betrokken samenleving, betrouwbare overheid: verkiezingsprogramma 2002-2006*, 2002, 37 (Because of the short time between the 2002 and 2003 elections, the CDA used the same program in both elections).

like many municipalities close to the borders, attracted many 'drug tourists' who caused nuisance. Leers hoped to solve this first problem with the creation of 'weed boulevards' outside the city. The second problem was the still unsolved 'back door problem', the fact that coffeeshops had to be supplied illegally. This stimulated organized crime, and demanded much attention from the police.²¹⁸ This second problem could only be solved with a change in cannabis policy on the national level. Therefore, Leers called on the government to allow an experiment with a decriminalized supply system for coffeeshops in his city.²¹⁹

It seemed that Leers' plea had little chance of success. Even though Leers was a CDA politician, the CDA-led government strongly opposed his proposal.²²⁰ The mayor and the national cadre of his party looked at the problems from different perspectives. As mayor, Leers was responsible for public order and safety in his city. This probably led him to focus on solving those issues, for which, he thought, regulating the 'back door' would be necessary. The CDA on the national level, on the other hand, was more concerned about public health and morality. They felt that any step in the direction of liberalization would further normalize drug use, and lead to more drug addiction.²²¹ The Christian Democrats still held on to the ambition of one day closing all coffeeshops: normalizing the coffeeshop by giving it a decriminalized supply route did not exactly fit that ambition.²²² Incidentally, Leers' clash with his party was not unique. He would not be the last CDA mayor to disagree with his party on this point.²²³

Faced with strong opposition from his own party, Leers had to look elsewhere for parties to support his experiment. GroenLinks, SP, PvdA, D66 and the LPF were sympathetic to his ideas, but did not have a majority.²²⁴ Leers needed the VVD's support. At first, this support did not seem to be forthcoming. In the first debate about his proposal, in April 2005, the VVD stuck to its old position that decriminalizing cannabis production would need to be done in a European context.²²⁵ VVD spokeswoman Laetitia Griffith even called Leers' proposal 'naive and thoughtless'.²²⁶ Surprisingly, however, in November 2005, the VVD changed its position. Its new spokesman on the field of drug policy, Frans Weekers, maintained that full legalization of cannabis was only possible if international law and

²¹⁸ *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4697.

²¹⁹ NRC, 'Vernietigen en gedogen', 28-4-2005.

²²⁰ *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4713.

²²¹ *Kamerstukken II* 2005/06, 24077, nr. 191 (18-8-2006), 3-5.

²²² CDA, *Betrokken samenleving, betrouwbare overheid: verkiezingsprogramma 2002-2006*, 2002, 36; CDA, *Vertrouwen in Nederland. Vertrouwen in elkaar. Verkiezingsprogramma 2006-2011*, 2006, 34.

²²³ For instance, in 2015 this happened again: *Handelingen II* 2014/15, nr. 95, item 17 (11-6-2015), 95-17-2.

²²⁴ *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4695 (GroenLinks), 78-4702 (D66), 78-4706 (LPF), 78-4708 (PvdA), 78-4709 (SP).

²²⁵ *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4697.

²²⁶ *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4723.

international consensus permitted such a move. But he did not see any objections for a pilot to regulate the ‘back door’, under very strict conditions.²²⁷ In the first week of December the VVD, together with PvdA and D66, signed the ‘Maastricht Manifesto’, which called for an experiment with decriminalized cannabis in Maastricht.²²⁸ Suddenly, there was a parliamentary majority for an experiment with a decriminalized supply system for cannabis.

What explained the VVD’s shift of positions? ChristenUnie spokesman André Rouvoet complained that the VVD’s position seemed to be determined by its spokesman on the issue.²²⁹ While Weekers’ own position might indeed have played a role, this explanation seems too simplistic. Weekers was not the VVD’s leader, and could have easily been stopped by the rest of his party if they did not agree with him. Judging by Weekers’ own statements, the reason for the VVD’s turn might have been an apparent change in the international situation. In an interview with *NRC* in May 2005, European Commissioner Franco Frattini had shown a surprising tolerance to the divergent Dutch drug policy. In this interview, Frattini had refused to formally react to Leers’ plans to experiment with a decriminalized system of cannabis cultivation, because ‘there was no European position’ on that matter. Moreover, Frattini had said that he would not oppose legalization of drug use, if the Dutch government would continue to provide full cooperation to tackle drug trafficking.²³⁰ It is not difficult to understand how this could have been interpreted as a green light. Weekers explicitly referred to Frattini’s statements, and explained that the VVD’s shift was in line with its earlier position that the Netherlands should move towards liberalization if the international situation allowed.²³¹

The counterattack

Though faced by a parliamentary majority of VVD, PvdA and D66, the CDA minister of Justice Piet Hein Donner remained unwilling to allow the experiment to take place. In October, Donner had requested the TMC Asser Institute, specialized in international law, to ascertain whether the Netherlands’ international legal obligations allowed an experiment with a decriminalized system of cannabis supplying. The resulting report was released in December.²³² The report concluded that such an experiment would violate European law, specifically article 2 paragraph 2 of Framework Decision 2004/757/JHA. This provision

²²⁷ *Kamerstukken II 2005/06, 24077, nr. 173 (6-12-2005), 3.*

²²⁸ Nebahat Albayrak, Frans Weekers, Boris van der Ham and Gerd Leers, *Manifest van Maastricht: experiment voor het reguleren van de teelt en handel van soft drugs*, Maastricht 2005.

²²⁹ *Kamerstukken II 2005/06, 30300 VI, nr. 65 (17-11-2005), 14.*

²³⁰ *NRC, ‘Drugsbeleid zaak EU-landen’, 6-5-2005.*

²³¹ *Kamerstukken II 2005/06, 30300 VI, nr. 65 (17-11-2005), 14.*

²³² T.M.C. Asser Instituut, *Experimenteren met het Gedogen van de Teelt van Cannabis ten Behoeve van de Bevoorrading van Coffeeshops – Internationaal rechtelijke en Europees rechtelijke aspecten*, 2005, <https://zoek.officielebekendmakingen.nl/kst-24077-175-b1.pdf>, consulted 10-4-2024.

required cannabis cultivation to be punishable under criminal law, unless it was for personal use.²³³ However, this was not enough to convince the VVD. Weekers continued to refer to Frattini's statements, and stated that if there was really no room under international law, 'we should see if we can create that room'.²³⁴

Therefore, Donner also used the international opposition as an argument. In April 2005, the minister had promised to write to all national governments in the EU to ask if they felt any sympathy for the Dutch drug policy. This way, he hoped to conclusively show pro-liberalization parties that the tolerance policy did not enjoy international support.²³⁵ In January 2006, he announced that the correspondence showed that there was little international sympathy for Dutch drug policy. Parliamentarians could read the (confidential) correspondence for themselves.²³⁶ In February 2006, Donner also met with the Belgian minister of the Interior, Patrick Dewael, who strongly criticized Leers' plans for an experiment.²³⁷ By the end of the month, the political clash over the cannabis experiment took a turn for the absurd. Mayor Leers collaborated with punk band 'De Heideroosjes' to record a song which criticized the tolerance policy and pleaded for legalization of cannabis.²³⁸ In response, Donner recorded a rap song defending his repressive policy.²³⁹

This merciless final blow had not been necessary. One day before the release of Donner's rap debut, the VVD had announced that it would no longer support an experiment with a decriminalized cannabis supply system.²⁴⁰ In a commission debate on 22 June 2006, it briefly seemed that the VVD was reconsidering: Weekers still expressed sympathy for an experiment with decriminalized cannabis supply.²⁴¹ However, when PvdA and D66 proposed a parliamentary motion calling for such an experiment, the VVD did not support it. Weekers explained that he still supported the Maastricht Manifesto, but opposed this particular motion. He complained that the motion had been proposed too hastily, and that he could not support the wording because it called for the minister to give instructions to the Public Prosecution, which Weekers held to be a violation of constitutional law.²⁴² Instead, Weekers

²³³ T.M.C. Asser Instituut, *Experimenteren met het Gedogen van de Teelt van Cannabis ten Behoeve van de Bevoorrading van Coffeeshops – Internationaal rechtelijke en Europees rechtelijke aspecten*, 2005, <https://zoek.officielebekendmakingen.nl/kst-24077-175-b1.pdf>, consulted 10-4-2024, 23-25.

²³⁴ *Kamerstukken II* 2005/06, 24077, nr. 177 (24-1-2006), 5; NRC, 'Legale wietteelt kan niet', 13-12-2005.

²³⁵ *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4730/78-4731.

²³⁶ *Kamerstukken II* 2005/06, 24077, nr. 177 (24-1-2006), 9. Sadly, the correspondence remains confidential, so there is no way of knowing what exactly this lack of sympathy entailed.

²³⁷ NRC, 'In Europa valt het niet uit te leggen', 24-2-2006.

²³⁸ NRC, 'Leers en punkband samen in wietlied', 12-1-2006.

²³⁹ NRC, 'De stemming', 27-2-2006; Donners rap song can be consulted here: Piet-Hein 'The Don' Donner and Barnier 'Meester G.' Geerling, untitled rap song, <https://www.youtube.com/watch?v=SyOwwTHi0I8>, consulted 26-5-2024.

²⁴⁰ NRC, 'In Europa valt het niet uit te leggen', 24-2-2006.

²⁴¹ *Kamerstukken II* 2005/06, 24077, nr. 191 (18-8-2006), 4.

²⁴² *Kamerstukken II* 2005/06, 24077, nr. 191 (18-8-2006), 94-5791.

proposed his own motion, which was less strongly worded. It only called for the government to 'find solutions' for the back door problem which were 'in line with the Maastricht Manifesto'. This motion left the government with enough room for maneuvering to avoid supporting an experiment. That was exactly what happened: there would not be an experiment with cannabis supplying under the Balkenende governments.

What caused the VVD to withdraw its support for experiments with decriminalized cannabis production? Firstly, the international reactions which Donner had whipped up must have diminished the VVD's resolve. Secondly, the VVD was put under significant pressure from the CDA. Minister Donner threatened to relinquish his post if the motion of PvdA and D66 was passed. He held that the experiment proposed in the motion would violate the law. If parliament wanted it to be carried out, it would just have to find another minister of Justice, 'probably from the criminal underworld'.²⁴³ If the VVD would support the motion, it could trigger a government crisis. Already in February, Weekers had stated that this was 'not a matter to let a cabinet collapse on'.²⁴⁴ Thus, the newfound 'purple' unity of D66, PvdA and VVD on cannabis policy ended in 'an old-fashioned purple bang', as D66 parliamentarian Boris van der Ham said.²⁴⁵ Just over a week later, cabinet Balkenende II fell when D66 left the coalition because of an unrelated scandal.²⁴⁶

Conclusion: continuity despite change

Despite the very different political situation, the period 2002-2006 shows striking parallels with the situation under the purple government. The same problems were recognized, and the same alternatives were proposed as the solution. And just like in 1994, cannabis policy remained the same even though the political situation seemed receptive to change. The CDA's takeover of power did not result in a closure of the coffeeshops or some other significant move towards repression. Instead, the CDA continued the stricter, but still liberal, cannabis policy that the purple government had created. The Christian democrats had little choice: even with the CDA's election victories, proponents of closing the coffeeshops still did not come close to having a parliamentary majority.

However, the CDA's power did allow them to block any liberalization. This did not prove to be necessary in 2002, despite the surprising electoral gains of the new pro-liberalization party LPF. In the chaos following the murder of the LPF's leader Pim

²⁴³ *Kamerstukken II 2005/06*, 24077, nr. 191 (18-8-2006), 94-5793.

²⁴⁴ NRC, 'In Europa valt het niet uit te leggen', 24-2-2006.

²⁴⁵ *Kamerstukken II 2005/06*, 24077, nr. 191 (18-8-2006), 94-5792.

²⁴⁶ Parlement.com, 'Kabinet-Balkenende II (2003-2006)', https://www.parlement.com/id/vhnnmt7jpaazy/kabinet_balkenende_ii_2003_2006, consulted 12-4-2024.

Fortuyn, cannabis policy was not on the policy agenda. In 2005 and 2006, however, the CDA did use its strong position to prevent liberalization. One of the CDA's own mayors, Gerd Leers, proposed a new alternative: a limited-scale experiment. He managed to get the issue of cannabis policy high on the policy agenda again. For a while, it seemed the political situation was receptive to this alternative. Unlike a decade earlier, there was no constant barrage of French criticism. The European Union, in the person of European Commissioner Frattini, seemed not to oppose the idea. However, CDA minister Piet Hein Donner vigorously brought the old objections of international law and international pressure in position again. Combined with the threat of a government crisis, this dissuaded the VVD from lending support. Who knows, perhaps with a more tractable minister of Justice, an experiment with a decriminalized supply of cannabis would have been started nearly two decades earlier.

2.2 2006-2017: Remaining strict

In his rap debut in 2006, CDA minister of Justice Donner proclaimed: 'Lijkt het beleid soms wat verward; nou, in dezen ben ik hard' (Roughly translated: 'The policy may seem somewhat confused, well, in this I remain strict').²⁴⁷ This could well have been the motto of the CDA and VVD-led governments which ruled in the following decade. Progressive parties continued to advocate for a legal or decriminalized way to supply coffeeshops, but their pleas fell on deaf ears. The VVD, which held the decisive middle position in the parliamentary power balance, became even less inclined to support any move towards cannabis policy liberalization. Meanwhile, cannabis policy became even more repressive, especially under the first two VVD-led governments which ruled from 2010 to 2017. Even the PvdA's participation in government from 2012 onwards did not change this, even though the social democrats had promised to fully regulate cannabis production in the election campaign.²⁴⁸

This time, the absence of cannabis policy liberalization had little to do with international pressure. There was no constant stream of French complaints about coffeeshops like in the 1990s. And though, hypothetically, neighboring countries might not have appreciated a full decriminalization or legalization of cannabis, they had no reason to warn the Netherlands off. Nor the government, nor a majority in parliament supported plans for significant liberalization of cannabis policy in this period. While the Netherlands' cannabis policy was further from liberalization than ever, other countries moved in the opposite

²⁴⁷ Piet-Hein 'The Don' Donner and Barnier 'Meester G.' Geerling, untitled rap song, <https://www.youtube.com/watch?v=SyOwwTHi0I8>, consulted 26-5-2024.

²⁴⁸ PvdA, *Nederland sterker & socialer: Verkiezingsprogramma Tweede Kamerverkiezingen 2012*, 2012, 38.

direction. Starting in 2012, several U.S. states legalized cannabis, as did Uruguay as the first country in 2014, followed in 2017 by Canada.²⁴⁹ So why did the Netherlands stay on the path to repression, when international pressure abated and other states and countries took the step towards full legalization?

Problem recognition

Overall, progressive and conservative parties largely held on to their positions. As before, parties remained divided on the question if tolerating coffeeshops stimulated drug use. Christian democrat parties still held that this was the case, and were especially adamant that coffeeshops near schools should be closed.²⁵⁰ From 2006, this position was shared by a new party, the right-wing populist PVV.²⁵¹ Progressive parties continued to focus on the ‘back door problem’ as the main flaw of the tolerance policy.²⁵² However, not everything stayed the same. The issues of coffeeshop-related nuisance, organized crime, and the Netherlands’ international position remained, but changed in nature.

Nuisance

According to official statistics, the percentage of people experiencing drug-related nuisance stabilized at around 5 percent from about 2006 onwards.²⁵³ As before, it is unclear to what extent this nuisance was caused by coffeeshops. In 2009, a large literature study concluded that coffeeshops sometimes evoked feelings of unsafety, but that overall, the nuisance from coffeeshops was hard to differentiate from nuisance from other establishments like cafes and bars.²⁵⁴ It seems that coffeeshop-related nuisance decreased somewhat, at the latest from 2015 onwards. The National Drug Monitor reported that in 2015 and 2017,

²⁴⁹ Ivana Obradovic, ‘From prohibition to regulation: A comparative analysis of the emergence and related outcomes of new legal cannabis policy models (Colorado, Washington State and Uruguay)’, *International Journal of Drug Policy* 91 (2021) 102590.

²⁵⁰ *Handelingen II* 2005/06, 31070, nr. 82 (19-6-2007), 82-4386 (CDA), 82-4407 (ChristenUnie), 82-4413 (SGP); *Handelingen II* 2012/13, 33400-VI, nr. 28 (28-11-2012), 28-6-49 (CDA), 28-6-58 (ChristenUnie), 28-6-63 (SGP); *Handelingen II* 2012/13, nr. 48 (5-2-2013), 48-4-8 / 48-4-9 (CDA).

²⁵¹ For instance: *Handelingen II* 2009/10 nr. 46 (26-1-2010), 46-4375; *Kamerstukken II* 2013/14, 24077, nr. 317 (10-4-2014), 19.

²⁵² For instance: *Handelingen II* 2007/08, nr. 60 (6-3-2008), 60-4217 (SP) 60-4232 (GroenLinks); *Handelingen II* 2011/12, nr. 2, item 4 (21-9-2011), 2-4-61 (D66); *Handelingen II* 2011/12, nr. 58, item 7 (1-3-2012), 58-7-60 (PvdA); *Handelingen II* 2012/13, 33400-VI, nr. 28 (28-11-2012), 28-6-49 (GroenLinks); *Kamerstukken II* 2013/14, 24077, nr. 317 (10-4-2014), 2 (GroenLinks); 3 (D66); 4 (SP), 9 (PvdA).

²⁵³ Margriet van Laar and Marianne van Ooyen-Houben (eds.), *Evaluatie van het Nederlandse drugsbeleid*, Utrecht/Den Haag 2009 (WODC/Trimbos Instituut), 311; Margriet van Laar, *Nationale Drug Monitor: Jaarbericht 2010, 2011* (WODC and Netherlands Institute for Mental Health and Addiction), 24; Margriet van Laar and Barbra Van Gestel (eds.), *Nationale Drug Monitor: Jaarbericht 2017*, Utrecht/Den Haag 2017 (WODC and Netherlands Institute for Mental Health and Addiction), 19.

²⁵⁴ Bert Bieleman et al., *Drugsgerelateerde overlast: Literatuurstudie*, Groningen/Rotterdam 2009 (Intraval), 2.

coffeeshop-related nuisance was lower than in 2014. Moreover, in most municipalities, coffeeshop-related nuisance was absent, or occurred only rarely. In those years, there were no municipalities with significant coffeeshop-related nuisance.²⁵⁵ However, just like in the previous period, there were large differences between places. In some cities, no problems with coffeeshops were reported. But drug tourism continued to cause nuisance in the south of the country, even after 2012, when the access to coffeeshops was limited to Dutch citizens in many municipalities in that region.²⁵⁶

Just like in the previous period, coffeeshop-related nuisance presented a mixed picture, but seemed to decrease. However, it played a larger role in the parliamentary debates, especially from 2010 onwards, when the VVD came to power.²⁵⁷ This may reflect a larger societal trend: a 2009 report stated that societal tolerance for this kind of nuisance had decreased.²⁵⁸ In that year, the CDA-PvdA government Balkenende IV also released a new policy report for drug policy, 'Geen deuren maar daden' (no doors but actions). While it mostly promised continuity of the existing policy, it also contained some hard verdicts about coffeeshops. It stated that coffeeshops had diverged too much from what they were originally intended to be: small facilities serving a clientele from their own region.²⁵⁹ They contributed less than expected to the protection of minors against drugs, were often bigger than desirable, and systematically served a foreign clientele.²⁶⁰ The new policy goal would be to reduce the size and scale of coffeeshops again.²⁶¹

In the end, it would not be Balkenende IV, but the first two VVD-led governments that enthusiastically pursued this policy goal. The VVD minister of Justice Ivo Opstelten strongly emphasized the need to combat coffeeshop-related nuisance.²⁶² He was so eager to combat nuisance, in fact, that he did not hesitate to exaggerate the problem to gain support for his fight. After his tenure as minister of Justice, it turned out that in 2012 and 2013, he had

²⁵⁵ Margriet van Laar and Marianne van Ooyen-Houben (eds.), *Nationale Drug Monitor: Jaarbericht 2016*, Utrecht/Den Haag 2016, 8; Margriet van Laar and Barbra Van Gestel (eds.), *Nationale Drug Monitor: Jaarbericht 2017*, Utrecht/Den Haag 2017, 23; Margriet van Laar, Guus Cruys, C.J.A. van Miltenburg (eds.), *Nationale Drug Monitor: Jaarbericht 2019*, Utrecht/Den Haag 2020, 23.

²⁵⁶ Wim van de Donk et al., *Geen deuren maar daden: nieuwe accenten in het Nederlands drugsbeleid*, 2009 (Adviescommissie Drugsbeleid), 14; Annemieke Benschop, Marije Wouters and Dirk Korf, *Coffeeshops, toerisme, overlast en illegale verkoop van soft drugs, 2014*, Amsterdam 2015 (WODC), 29-30.

²⁵⁷ For instance: *Handelingen II 2010/11 32500-VI*, nr. 27 (25-11-2010), 27-31; *Handelingen II 2011/12*, nr. 87, item 12 (24-5-2012), 87-12-74.

²⁵⁸ Margriet van Laar and Marianne van Ooyen-Houben (eds.), *Evaluatie van het Nederlandse drugsbeleid*, Utrecht/Den Haag 2009 (WODC/Trimbos Instituut), 295.

²⁵⁹ Wim van de Donk et al., *Geen deuren maar daden: nieuwe accenten in het Nederlands drugsbeleid*, 2009 (Adviescommissie Drugsbeleid), 37.

²⁶⁰ *Ibidem*, 39

²⁶¹ *Ibidem*, 41.

²⁶² For instance: *Handelingen II 2010/11 32500-VI*, nr. 27 (25-11-2010), 27-31; *Kamerstukken II 2013/14*, 24077, nr. 317 (10-4-2014), 22.

influenced reports from the supposedly independent research institute WODC to show problems with coffeeshop-related nuisance that did not actually exist.²⁶³ This way, the already hazy issue of the extent of coffeeshop-related nuisance became even less clear.

Organized crime

Despite years of increased enforcement efforts, the problem of organized crime did not show signs of disappearing. Quite the contrary, actually. Small-scale growers were disproportionately hit by the increased police efforts to combat cannabis cultivation operations in residential areas; it was mostly the big organized crime groups that remained.²⁶⁴ Meanwhile, the threat of organized crime became ever more visible and concrete. In December 2010, an emergency debate was held about the situation in Eindhoven: the mayor of that city warned that the police in his city had too little capacity to combat cannabis-related crime. According to him, about twenty gangs were active in his city, and they used excessive violence to fight each other.²⁶⁵ Around the same time, the mayor of Helmond had to go into hiding after threats from the criminal underworld.²⁶⁶ Incidents like these made the threat of organized crime a concrete, pressing issue, instead of a vague threat.

Cannabis-related crime would continue to be an important topic in parliamentary debate in the following years. The reactions of the political parties to this problem continued to differ. Progressive parties had been saying that the tolerance policy stimulated organized crime for years, and continued to do so.²⁶⁷ The violence only made this problem much more concrete. However, conservative parties CDA, ChristenUnie, SGP, PVV and VVD did not see a full decriminalization or legalization of cannabis as the solution to organized crime. They retorted that most cannabis was produced to be exported: a legal supply system for coffeeshops would therefore not solve the issue of organized crime.²⁶⁸

International relations and international law

The international situation of the Netherlands in this period presented a mixed picture. On the one hand, the legalization of cannabis in U.S. states and Uruguay in 2014 was a

²⁶³ NRC, 'Manipulatie onderzoek is gebruikelijk', 7-12-2017.

²⁶⁴ Jack Wever, *Geschiedenis van de Nederlandse Drugsbestrijding (1961-2011): Het Dirty Harry-Probleem*, dissertation 2020, 393.

²⁶⁵ NRC, 'Meer politie voor misdaadstad nummer 1: Eindhoven', 1-12-2010; *Handelingen II* 2010/11, nr. 31 (7-12-2010), 31-70.

²⁶⁶ NRC, 'Burgemeester Helmond weer in het openbaar na bedreigingen', 30-12-2010.

²⁶⁷ *Handelingen II* 2010/11, nr. 31 (7-12-2010), 31-71 (SP), 31-75 (D66), 31-81 (PvdA), 31-83 (GroenLinks).

²⁶⁸ *Handelingen II* 2010/11, nr. 31 (7-12-2010), 31-73 (ChristenUnie), 31-72 (VVD), 31-75 (SGP), 31-76 (CDA), 31-79 (PVV).

powerful signal that cannabis policy change was possible; this did not remain unnoticed in the Dutch parliament.²⁶⁹ On the other hand, that had not really changed the Netherlands' international position. It was still bound to the same international treaties. And though there was no longer a barrage of foreign criticism, as a European Union member the Netherlands still had to take its neighbors into account.

However, the international factor became less prominent in debates: it was mentioned far less often than in previous years. Three developments may explain this. Firstly, the absence of constant foreign criticism may have led to the subjects of cannabis policy and international relations to be decoupled. Secondly, until early 2017, parliament did not come close to supporting cannabis policy liberalization. Therefore, it was not really necessary for opponents of cannabis policy liberalization to use the argument of international relations. Finally, euroscepticism had grown in popularity in the Netherlands in the early 2000s.²⁷⁰ Parties like the CDA and VVD, who had urged consideration for neighboring countries' interests in earlier times, perhaps now feared that this would lose them support.

The death of the Maastricht Manifesto

Even after the VVD refused to support the PvdA and D66 in June 2006, not all hope for experiments with decriminalization of cannabis production and supply was lost. In March 2007, progressive parties along with the VVD referred to a law proposal which would allow mayors to shut down properties involved in drug crimes as 'the first part of the Maastricht Manifesto'.²⁷¹ GroenLinks and D66 hoped that this stricter approach to illegal production would ensure the success of a legal method of supplying which would be added later. However, VVD spokesman Fred Teeven only explicitly voiced his support for this repressive first part.²⁷² In the following debate dedicated to drug policy, a year later, he declared that the VVD did not consider itself bound to the Maastricht Manifesto.²⁷³

²⁶⁹ *Handelingen II* 2012/13, nr. 51, item 6 (12-2-2013), 51-6-13 (GroenLinks); *Kamerstukken II* 2014/15, 24077, nr. 336 (8-12-2014), 5 (SP); *Handelingen II* 2014/15, nr. 95, item 17 (11-6-2015), 95-17-3 (D66).

²⁷⁰ Marcel Lubbers and Eva Jaspers, 'A longitudinal study of euroscepticism in the Netherlands: 2008 versus 1990', *European Union Politics* 12:1 (2010), 21-40, 31-32; Maurits J. Meijers, Lars Stevenson and Adriaan Schout, 'The Netherlands: Playing with Fire? Dutch Political Parties Between Reluctant and Pragmatic Pro-Europeanism', in: M. Kaeding et al. (eds.), *Euroscepticism and the Future of Europe*, Cham 2021, 153-157, 156.

²⁷¹ *Handelingen II* 2006/07, 30515, nr. 55 (29-3-2007), 55-3131.

²⁷² *Handelingen II* 2006/07, 30515, nr. 55 (29-3-2007), 55-3131.

²⁷³ *Handelingen II* 2007/08, nr. 60 (6-3-2008), 60-4233.

The VVD: from sympathy to rejection

The VVD's explicit abandonment of the Maastricht Manifesto was a sign of an important development: the VVD's loss of all sympathy for cannabis policy liberalization. Up to 2005, the position of the VVD on decriminalization or legalization of cannabis production can be summarized by a quote from their spokeswoman Laetitia Griffith: 'We want to, but it is not possible'.²⁷⁴ For a few months in 2005 and 2006, this changed to 'We want to, and it is possible'. From 2006 onwards, the VVD again considered decriminalization or legalization of cannabis production impossible. But from then on, the 'we want to' also seemed to disappear. The VVD started to become more and more negative about legalization, decriminalization or experiments. International law and international relations remained an important argument for this opposition. But VVD politicians, and after 2010 also VVD ministers, also became more and more inherently opposed to such solutions. They did not just reject them because of international concerns, but also because they feared the solutions would not work, or even have negative results.²⁷⁵

There are several possible reasons for the VVD's shift. The first is the change of leadership of the VVD. In 2006 Mark Rutte became the party's new leader, and in the following decade, the VVD ceased to display any theoretical support for cannabis policy liberalization. It seems unlikely that Rutte himself caused this change. Cannabis policy did not seem to be a very important topic for Rutte. His views on the matter seem to have stemmed more from strategic considerations than any deeply held conviction. In 2016, he called cannabis 'rubbish', and 'very dangerous', and stated that decriminalization of the supply chain would not solve the issue of organized crime.²⁷⁶ Less than a year later, while campaigning for the 2017 general elections, he espoused the opposite view. Although his party had opposed a proposal to regulate the cannabis supply system less than a month before.²⁷⁷

More important than Rutte's own beliefs may have been the stance of the people that rose to the top of the party under his leadership. The VVD contained two camps when it came to cannabis policy: one liberal camp, which was sympathetic about cannabis policy liberalization, and one conservative camp, which favored repressive measures against crime and nuisance.²⁷⁸ Under Rutte's leadership, members of the conservative camp got key

²⁷⁴ Original: 'Het kan niet, maar wij willen wel'. In my translation, the sentence is flipped, because this better captures Griffith's meaning. *Handelingen II* 2004/05, nr. 78 (27-4-2005), 78-4699.

²⁷⁵ For instance: *Handelingen II* 2010/11, nr. 31 (7-12-2010), 31-87; *Kamerstukken II* 2013/14, 24077, nr. 317 (10-4-2014), 19-20.

²⁷⁶ Algemeen Dagblad, "Criminelen blijven gewoon wiet exporteren", 24-9-2016.

²⁷⁷ NRC, 'Rutte is vóór het reguleren van wietteelt; de VVD niet', 13-3-2017.

²⁷⁸ An example of this is the following discussion in the VVD's party magazine 'Liber' in 2006: Frans Weekers, 'We moeten nu de aanval inzetten tegen de verloedering', *Liber* 1:1 (2006), 26-27, 26; Ton

positions in the party, and from 2010 onwards, in the VVD-led cabinets. One example was the position of spokesman of the VVD on drug policy. Up to 2006, this position had been fulfilled by Frans Weekers, who cosigned the Maastricht Manifesto. Some time after Mark Rutte came to power, Fred Teeven took over his position. He only showed support for repressive measures, never for cannabis policy liberalization.²⁷⁹ Teeven continued this line from 2010 to 2015, when he became Secretary of State of Justice.²⁸⁰ His superior at this time, minister Ivo Opstelten, also favored a repressive cannabis policy. He opposed cannabis policy liberalization with a zeal that, at times, was reminiscent of his predecessor Donner.²⁸¹

Secondly, the VVD seems to have lost faith in the effectiveness of a regulated cannabis supply chain for decreasing organized crime. When they came to power, the conservative liberals claimed that most cannabis produced in the Netherlands at that point was exported. For that reason, the VVD held that creating a regulated cannabis supply system would not bring an end to cannabis-related crime, and therefore was largely useless.²⁸² Connected to this is a third reason that may explain the VVD's abandonment of liberalization as a solution. By 2006, it had become very clear that creating a regulated cannabis supply chain would be a difficult process, which would create significant problems with international law and international relations. As cannabis policy liberalization proved to be so politically costly and its rewards uncertain at best, it might have seemed more prudent for the VVD to continue the tolerance policy while vigorously combating its negative side effects.

A fourth reason that the VVD abandoned its previous support for cannabis policy liberalization might have been the rise of a new competitor on the VVD's right flank. In 2006, the new right-wing populist party PVV, created by VVD defector Geert Wilders, entered parliament with nine seats.²⁸³ The PVV fiercely criticized the tolerance policy. In 2008, for instance, the party stated that drug tourists should be punished as drug smugglers.²⁸⁴ The VVD ran the risk of sounding weak when compared to the PVV's uncompromising tone, and

van der Schans, 'Legale kwekerijen kunnen niet concurreren met illegale', *Liber* 1:3 (2006), 25; Rob Lansu, 'Coffeeshops', *Liber* 1:4 (2006), 7; Martijn Bruijstens, 'Hennepsteelt', *Liber* 1:5 (2006), 7.

²⁷⁹ For instance: *Handelingen II* 2007/08, nr. 60 (6-3-2008), 60-4235.

²⁸⁰ For instance: *Handelingen II* 2012/13, nr. 51, item 6 (12-2-2013), 51-6-12; *Handelingen II* 2012/13, nr. 92, item 12 (6-6-2013), 92-12-95.

²⁸¹ Examples: *Handelingen II* 2010/11, nr. 31 (7-12-2010), 31-87; *Kamerstukken II* 2013/14, 24077, nr. 317 (10-4-2014), 14.

²⁸² For instance: *Kamerstukken II* 2013-2014, 24077, nr. 314 (Brief van de minister van Veiligheid en Justitie, 18-12-2013), 3; *Kamerstukken II* 2014/15, 29911, nr. 99 (16-3-2015), 3; *Handelingen II* 2014/15, nr. 95, item 17 (11-6-2015), 9.

²⁸³ Parlement.com, 'Tweede Kamerverkiezingen 2006', https://www.parlement.com/id/vhnnmt719z6v/tweede_kamerverkiezingen_2006, consulted 12-4-2024.

²⁸⁴ *Handelingen II* 2008/09 31700-VI, nr. 19 (4-11-2008), 19-1386.

this may have been an important reason for emphasizing repressive measures and abandoning sympathy for liberalization.

The PvdA: paying the price of power

One might have expected protests from the PvdA when the VVD explicitly abandoned the Maastricht Manifesto. However, none were forthcoming. De facto, the PvdA had also abandoned the Manifesto. That was the price of the party's decision to form a coalition with the CDA and ChristenUnie in 2007, creating the Balkenende IV government. The parties were strongly divided on the issue of drug policy, with the PvdA wanting liberalization and the CDA repression. The logical result was continuity: the government agreement promised no large-scale change on this subject.²⁸⁵ No decriminalization or experiments, but also no closing of coffeeshops.

That the PvdA gave up its ambitions of creating a solution for the 'back door problem' for the chance to be a part of the coalition was hardly surprising. As the largest pro-liberalization party, the social democrats had often played an important role in debates and efforts to create a decriminalized cannabis supply system. Examples are their parliamentary motions to regulate cannabis production in 1996 and 2000, and its role in the Maastricht Manifesto. However, cannabis policy was never one of the most important issues for them. In their election programs, subjects like social security, job security and international cooperation played a far larger role; their plans for cannabis policy liberalization were, at most, a small paragraph.²⁸⁶ The social democrats did not hesitate to sacrifice that one small paragraph to realize some of the many other ambitions.

2010-2012: A window for repression

The CDA's ambitions on cannabis policy also did not come to fruition. Despite repeated promises during campaigns to work towards closing all coffeeshops, the CDA-led governments which ruled from 2002 to 2010 had not brought significant change. Even though it was the biggest party, the CDA simply did not have the power to force a significant move towards repression. Just like the pro-liberalization parties, the pro-repression parties would need the VVD's support to close the coffeeshops, or restrict their operations. Up to 2006, when it was still part of the coalition, the VVD did not support such changes. As discussed before, the conservative liberals gained more sympathy for a repressive cannabis

²⁸⁵ 'Coalitieakkoord tussen de Tweede Kamerfracties van CDA, PvdA en ChristenUnie', 2006, 34.

²⁸⁶ For instance: PvdA, *Samen voor de toekomst: idealen en ambities 2010: Verkiezingsprogramma 2002-2006*, 2002, 62; PvdA, *Samen sterker: werken aan een beter Nederland: verkiezingsprogramma Tweede-Kamerverkiezingen 2006*, 2006, 82-83; PvdA, *Iedereen telt mee: de kracht van Nederland: Verkiezingsprogramma Tweede-Kamer verkiezingen 2010*, 2010, 56.

policy after 2006. However, by then, the CDA was in a coalition with the pro-liberalization PvdA, and the parties agreed not to change cannabis policy.

However, the 2010 elections would bring a great opportunity for pro-repression parties. This was decidedly not because of the Christian democrats: the CDA lost almost half of its seats, going from 41 to 21 seats. The VVD, on the other hand, went from 22 to 31 seats. Even more notable was the PVV's victory: the right-wing populist party went from 9 seats to 24.²⁸⁷ CDA, VVD and PVV created cabinet Rutte I, which consisted of CDA and VVD but which the PVV agreed to support.²⁸⁸ All three favored a strong repressive approach to coffeeshop-related nuisance and crime. The PVV was very negative about coffeeshops and the tolerance policy. In their election program, they promised to close all coffeeshops closer than 1 kilometer from a school, which would leave very few remaining.²⁸⁹ PVV spokesman Hero Brinkman even called for a total prohibition on cannabis, like in Belgium and Germany.²⁹⁰ The CDA, like before, wanted to move towards an end to the coffeeshops, starting with reducing their number and limiting access to them.²⁹¹ The VVD was the mildest of the three: the party 'merely' wanted a zero-tolerance policy to coffeeshop-related nuisance, an end to the sale of soft drugs to foreigners and the closing of coffeeshops in residential areas and near schools where possible.²⁹²

In the end, a compromise was reached. The tolerance policy would be continued, and the coffeeshops would not be closed en masse, despite the wishes of CDA and PVV. However, to combat coffeeshop-related nuisance, a far-reaching measure would be introduced. Coffeeshops would be transformed into closed clubs, only accessible to adult Dutch citizens who were members of that particular coffeeshop.²⁹³ That would mean a very significant de-liberalization of cannabis policy. Many municipalities were also not happy with the measure: they feared that tourists and occasional cannabis users would buy their cannabis on the black market. They were concerned that the resulting street dealing might actually increase nuisance, not decrease it.²⁹⁴ Despite these objections, the government pushed on, and decided to gradually implement the policy, starting in May 2012 in the border provinces of Zeeland, Noord-Brabant and Limburg.²⁹⁵

²⁸⁷ Parlement.com, 'Tweede Kamerverkiezingen 2010', https://www.parlement.com/id/vib7f70ymd9f/tweede_kamerverkiezingen_2010, consulted 30-5-2024.

²⁸⁸ 'Vrijheid en verantwoordelijkheid: Regeerakkoord VVD-CDA', 2010, 3-4.

²⁸⁹ PVV, 'De agenda van hoop en optimisme: Een tijd om te kiezen: PVV 2010-2015', 2010, 11.

²⁹⁰ *Handelingen II* 2010/11, nr. 31 (7-12-2010), 31-80.

²⁹¹ CDA/Marcel Migo, Lillian Bennink en Karin Hoentjen (eds.), *Verkiezingsprogramma 2010-2015: Slagvaardig en samen*, Den Haag 2010, 20.

²⁹² VVD, *Orde op zaken: Verkiezingsprogramma 2010-2014*, 2010, 33.

²⁹³ 'Vrijheid en verantwoordelijkheid: Regeerakkoord VVD-CDA', 2010, 40.

²⁹⁴ NRC, 'Jointje? Alleen als je lid bent', 31-5-2011.

²⁹⁵ NRC, 'Wietpas moet vanaf vandaag de drugstoerist weren', 1-5-2012.

2012-2017 Another purple disappointment

In the end, the ‘closed club criterium’ would not have a long life, and it would not be implemented in the whole country. By the time it went into force in the three southern provinces, the coalition had already collapsed. The ensuing elections brought a large victory for both the VVD and the PvdA, and in November, these two parties together created government Rutte II.²⁹⁶ One of the first measures to go was the ‘closed club criterium’. The PvdA a strong opponent of this de-liberalization of cannabis policy, and, moreover, the objections to the measure proved to be justified. The municipalities where coffeeshops had been turned into closed clubs actually experienced more nuisance, due to the increase of street dealing.²⁹⁷

While the ‘closed club criterium’ quickly went out of the window, the VVD’s plans to restrict access to coffeeshops to only allow Dutch citizens were pushed on. Although this ‘resident criterium’ would, in the end, only be enforced in a few municipalities, it was a sign that repression still reigned.²⁹⁸ The ministers of Justice in the new government would continue to be affiliated to the VVD, which gave the VVD an excellent position to influence drug policy. As mentioned before, one of these ministers, Ivo Opstelten, even influenced independent research to show nuisance problems that did not exist. The VVD ministers also opposed any move towards liberalization. When this was discussed in 2015, VVD minister of Justice Ard van der Steur not only used the old arguments of international law and the Netherlands’ international reputation, but also claimed that a decriminalized supply system would also not have any positive results. He claimed that a large part of Dutch cannabis was produced to be exported, and changing coffeeshop policy would therefore not reduce organized crime.²⁹⁹

In the cannabis policy of Rutte II it was hard to find any elements of influence from the PvdA. This was even more striking because in the election campaign in 2012, the PvdA had reiterated its ambition of fully regulating the cannabis supply chain.³⁰⁰ While it is not surprising that this proposal did not bring results, it is strange that the PvdA seemingly let the VVD entirely fully determine cannabis policy. But why? There was no parliamentary majority for a full decriminalization or legalization of cannabis, but that did not mean that the

²⁹⁶ Parlement.com, ‘Tweede Kamerverkiezingen 2012’, https://www.parlement.com/id/viyyadlr1tn1/tweede_kamerverkiezingen_2012, consulted 10-4-2024.

²⁹⁷ Marianne van Ooyen-Houben, Bert Bieleman en Dirk Korf, *Het Besloten club- en het Ingezetenen criterium voor coffeeshops: Evaluatie van de implementatie en de uitkomsten in de periode mei-november 2012*, 2013, 10-11.

²⁹⁸ Annemieke Benschop, Marije Wouters and Dirk Korf, *Coffeeshops, toerisme, overlast en illegale verkoop van soft drugs*, 2014, Amsterdam 2015, 25.

²⁹⁹ *Handelingen II 2014/15*, nr. 95, item 17 (11-6-2015), 95-17-9.

³⁰⁰ PvdA, *Nederland sterker & socialer: Verkiezingsprogramma Tweede Kamerverkiezingen 2012*, 2012, 38.

repressive policies of the previous governments had to be continued. With 38 seats, the PvdA had only 3 seats fewer than the VVD, so its bargaining position was not so bad as to warrant this result.³⁰¹ A possible explanation is that the PvdA was pushed on the defensive by the previous government's decision to make coffeeshops into closed clubs: perhaps the social democrats used all their bargaining power to get this repressive measure removed. Most likely, however, the social democrats were again paying the price of power, as they had done in 2007. Especially in this time of economic crisis, cannabis was far from the most important topic for the social democrats: it was just a small paragraph in their election program.³⁰² One almost gets the suspicion that the PvdA's support of cannabis policy liberalization in 2012 was little more than a way to win votes, and to use as a bargaining chip.

2.3 2017: A small window for the back door

Despite coming close to having a parliamentary majority several times, and several close calls, pro-liberalization parties had never managed to create a legalized or decriminalized cannabis supply system for coffeeshops. Time and again, the political situation proved to be unreceptive, and long-lasting parliamentary majorities failed to emerge. In 2017, however, this briefly and unexpectedly changed.

A victory that brought no change

In February 2017, less than a month before the next parliamentary elections, it suddenly seemed like there would be a major step in the direction of liberalization. While the government, despite the PvdA's involvement, kept to its repressive course, the opposition had not sat still. In the years before, D66 politician Vera Bergkamp had worked to create a law proposal which proposed to create a decriminalized supply system for coffeeshops. Decriminalization as a solution for the 'back door problem' had been proposed many times before, but never before had it been fully elaborated in a proposed law. Moreover, after years of political gridlock, the political situation finally offered an unexpected opportunity for this kind of policy change. After the 2012 elections, pro-liberalization parties had received 71 seats, 5 seats short of a majority.³⁰³ But in the following years, a significant number of parliamentarians had left their parties, including three from the PVV and one from the VVD.

³⁰¹ Parlement.com, 'Tweede Kamerverkiezingen 2012', https://www.parlement.com/id/viyyadlrtn1/tweede_kamerverkiezingen_2012, consulted 10-4-2024.

³⁰² PvdA, *Nederland sterker & socialer: Verkiezingsprogramma Tweede Kamerverkiezingen 2012*, 2012, 38.

³⁰³ Parlement.com, 'Tweede Kamerverkiezingen 2012', https://www.parlement.com/id/viyyadlrtn1/tweede_kamerverkiezingen_2012, consulted 10-4-2024.

These parliamentarians turned out to be more positive about cannabis policy liberalization than the parties they had left. They, as well as the small 50Plus party and its former member Norbert Klein, decided to support D66's proposal. The new law was accepted with 77 votes to 72.³⁰⁴

The problems with the tolerance policy had been broadly recognized for years, the alternative of a regulated supply system had been proposed since the 1990s, but for various reasons, the political landscape had never accepted this alternative. Now, the splitting off of several parliamentarians from the PVV and VVD created a narrow majority, breaking the VVD's long-held veto position. The three streams of problem recognition, availability of an alternative and political receptiveness aligned: policy window appeared. However, the window was incomplete. The proposed law was accepted by parliament, but still had to be accepted by the Senate. There, parties opposing liberalization still had a majority. D66 decided to withhold the proposal from discussion until a majority would materialize. However, none has appeared since. The proposal remains in limbo, waiting for a second policy window.³⁰⁵

The experiment

While a fully fledged policy change remained out of reach, 2017 still brought a significant step in the direction of a more liberal cannabis policy. During its formation, the new government Rutte III, which consisted of VVD, D66, CDA and ChristenUnie, agreed that an experiment with a decriminalized cannabis supply system would take place. This was a curious development. VVD, CDA and ChristenUnie had all opposed D66's proposal just a few months before, and together held 57 seats: far more than D66, which had 19.³⁰⁶ The support of CDA and ChristenUnie was especially surprising: they had always supported a more repressive cannabis policy, and had little sympathy for coffeeshops. How did D66, the only coalition party fully committed to this idea, manage to convince the others? As the coalition negotiations were secret, there is no way to know for certain. However, several developments made the political situation more susceptible to change.

International change

Although the Dutch cannabis policy debate seemed stuck in the same position as in the 1990s, the world changed. In 2012, the state of Colorado became the first place where

³⁰⁴ *Handelingen II*, 2016/2017, nr. 55 (21-2-2017), item 14, 55-14-1.

³⁰⁵ Eerste Kamer, 'Initiatiefvoorstel-Sneller en Sjoerdsma Wet gesloten coffeeshopketen', https://www.eerstekamer.nl/wetsvoorstel/34165_initiatiefvoorstel_sneller, consulted 10-4-2024.

³⁰⁶ Parlement.com, 'Tweede Kamerverkiezingen 2017', https://www.parlement.com/id/vk1wljxti6u9/tweede_kamerverkiezingen_2017, consulted 10-4-2024.

cannabis became fully legalized. In 2013, Uruguay decided to do the same as the first country, followed by Canada in 2017.³⁰⁷ The Netherlands was no longer the country with the most liberal drug policy. It was a signal that a more liberal cannabis policy was possible: practically, but also legally and diplomatically. There has been discussion if the legalizing nations and states breached their obligations under international law, and the United Nations International Narcotics Control Board protested.³⁰⁸ But the legalizing nations and states did not suffer severe international backlash. And if it were to follow their example, the Netherlands would not have to face the wrath of the prohibitionist world wholly alone. Parliamentarians from pro-liberalization parties pointed to these developments as an argument that cannabis policy liberalization was possible.³⁰⁹ This also served to create a sense of urgency, a sense that the Netherlands was falling behind: if even states of the formerly prohibitionist U.S. legalized cannabis, why would the Netherlands fall behind?³¹⁰

VVD support

The first two VVD-led cabinets had fiercely opposed all steps towards liberalization: the pro-repression camp had the upper hand within the party. However, not all VVD members were happy with this course. During the VVD's general meeting in November 2016, the party's members voted to change the election manifesto: the party would now strive to end the 'strange situation' that the sale of cannabis was tolerated, and not the supplying of cannabis to coffeeshops.³¹¹ The VVD would support 'smarter regulation'.³¹² This change did not bring the VVD to support the D66 proposal to create a decriminalized method of supplying coffeeshops: the party saw too many risks. However, the party still had to do something to placate their pro-liberalization members. Therefore, the VVD could hardly avoid supporting the experiment. Perhaps the VVD also hoped to gain public support with this move. In March 2017, during the campaign for the general elections, VVD leader Mark Rutte had stated that he 'leaned towards D66 and GroenLinks when it comes to regulating cannabis cultivation'. This was a curious statement, considering the fact that his party had

³⁰⁷ Ivana Obradovic, 'From prohibition to regulation: A comparative analysis of the emergence and related outcomes of new legal cannabis policy models (Colorado, Washington State and Uruguay)', *International Journal of Drug Policy* 91 (2021) 102590.

³⁰⁸ Robin Hofmann, 'The 'Total-Legalization' of Cannabis in Germany: Legal Challenges and the EU Free Market Conundrum', *European Journal of Crime Criminal Law and Criminal Justice* 31:2 (2023), 173-196, 178-179.

³⁰⁹ For instance: *Handelingen II* 2012/13, nr. 51, item 6 (12-2-2013), 51-6-13 (Groenlinks); *Kamerstukken II* 2013/14, 24077, nr. 317 (10-4-2014), 5 (SP); *Handelingen II* 2014/15, nr. 95, item 17 (11-6-2015), 3 (D66).

³¹⁰ This sentiment was explicitly voiced by Joram van Klaveren, who had split off from the PVV: *Handelingen II* 2016/17, nr. 47, item 8 (1-2-2017), 47-8-15.

³¹¹ NRC, 'Nederlandse oplossing voor een Nederlands probleem', 13-2-2017.

³¹² NRC, 'Bij de VVD is er weer eens echt discussie', 18-11-2016.

refused to support D66's proposal for regulating cannabis cultivation in parliament just a month before. *NRC* aptly summarized the situation: 'Campaigner Mark Rutte once again disagrees with Prime Minister Mark Rutte'.³¹³

The crumbling of Christian democracy

A last question remains: why did ChristenUnie and the CDA agree to the experiment, after they had opposed any move towards liberalization of cannabis policy for years? It is clear that these parties were not very enthusiastic about the proposal. In their 2017 election programs, both parties were negative about the tolerance policy.³¹⁴ It is quite clear that allowing this experiment to take place was a concession on the part of the Christian Democrats. In a speech addressing the CDA congress, CDA leader Sybrand Buma presented it as such. He enumerated many points of the CDA election program that would be made into policy under the new coalition, and then granted that the CDA had to concede when it came to the cannabis experiment.³¹⁵ Although it definitely was not a policy that CDA and ChristenUnie wanted, it was not that big of a concession. After all, an experiment was no full policy change, and did not have to lead to such policy change. The reason why the Christian Democrat parties had to concede had much to do with the fact that the CDA had been losing seats since the 2010 elections. In 2006, for instance, when CDA minister Donner blocked an earlier iteration of the same experiment from taking place, the CDA still had 44 seats. In 2017, it held 19, which made it just as big as D66.³¹⁶ By 2017, the CDA had to concede on cannabis policy if it wanted its other ambitions to be made into policy. The Christian Democrats now had to pay the price of power.

2017-2023 Delay

While the coalition of VVD, D66, CDA and ChristenUnie agreed to hold the cannabis-experiment, they did not exactly make haste in performing it. First, it had to wait until June 2018 to receive advice from an independent commission. Then, a law to make the experiment possible had to be proposed, and agreed to by parliament, which happened in January 2019. Eleven months later, the senate also agreed. Then, the real waiting started: it

³¹³ NRC, 'Rutte is vóór het reguleren van wietteelt; de VVD niet', 13-3-2017.

³¹⁴ ChristenUnie, *Hoopvol realistisch: Voorstellen voor een samenleving met toekomst: Verkiezingsprogramma 2017-2021*, 2017, 23; CDA, *Keuzes voor een beter Nederland: Verkiezingsprogramma 2017-2021*, 2017, 29.

³¹⁵ DNPP, 'Speech Sybrand Buma CDA congres 2-6-2018', 2-3, <https://dnpprepo.ub.rug.nl/13035/7/Speech%20Sybrand%20Buma%20CDA%20Congres%20Den%20Bosch%20%20juni%202018.pdf>, consulted 30-5-2024.

³¹⁶ Parlement.com, 'Tweede Kamerverkiezingen 2017', https://www.parlement.com/id/vk1wljxti6u9/tweede_kamerverkiezingen_2017, consulted 10-4-2024.

would take until December 2023 for the experiment to be started, if only partially.³¹⁷ While a wish to prepare carefully, unexpected setbacks, and the delaying effects of the Covid-19 crisis undoubtedly played a role in causing this delay, lack of enthusiasm from VVD and especially CDA and ChristenUnie might also have played an important part.

In any case, the delays have been very convenient for parties opposing cannabis policy liberalization: the experiment has completely taken all momentum for cannabis policy change away. In the last years, parliamentary debates about cannabis policy revolved mostly around the experiment, its delays, and the question if it has been set up to fail.³¹⁸ Moreover, the experiment is the ultimate argument for keeping things the same for the time being. Until the results are in, any debate about cannabis policy can be silenced with the phrase ‘for now, we should wait for the results of the experiment’. In that sense, the experiment that pro-liberalization parties wanted for almost twenty years, has proved to be a double-edged sword. If the results are positive, this is an excellent argument for cannabis policy liberalization. But for now, the experiment has brought the debate to a standstill.

2.4 Conclusion: the costs of change

For such a near-universally denounced policy, the strict tolerance policy as created by the first purple government has shown remarkable resilience. Neither pro-liberalization parties, nor pro-repression parties have managed to bring real and lasting change. After two decades, the pro-liberalization parties have finally got their experiment with a regulated cannabis supply chain, but for now it has mostly served to postpone discussion about further liberalization. Pro-repression parties briefly managed to significantly restrict access to coffeeshops in the south of the country, but this measure proved counterproductive, and was quickly removed when the PvdA entered government in 2012. Meanwhile, most involved parties have shown remarkable continuity in their interpretations of problems and the solutions.

There are two main explanations for the endurance of both the tolerance policy and the continuity in the debates about it. Firstly, political gridlock undoubtedly plays a role. Both camps never got enough seats to bring change. They were always dependent on the VVD’s support: support which the conservative liberals were at first hesitant, and later plain unwilling, to give. Possible explanations for the VVD’s change of position might have been

³¹⁷ Rijksoverheid, ‘Tijdelijk experiment gesloten coffeeshop’, <https://www.rijksoverheid.nl/onderwerpen/experiment-gesloten-coffeeshopketen-wietexperiment/tijdelijk-experiment-gesloten-coffeeshopketen>, consulted 26-5-2024.

³¹⁸ For instance: *Handelingen II* 2018/19, nr. 25, item 29 (20-11-2018), 25-29-60; *Handelingen II* 2018/19, nr. 42, item 8 (17-1-2019), 42-8-20 - 42-8-23; *Kamerstukken II* 2020/21, 24077, nr. 475 (23-6-2021), 11, 18, 19; *Kamerstukken II* 2021/22, 24077, nr. 490 (1-6-2022), 3, 8-11, 18-22.

changes in the upper layers of the party, a loss of belief in the problem-solving power of liberalization, or plain strategy, to keep the PVV at bay. However, I would argue that there is a second, underlying reason for the lack of change. A reason that also helps explain the VVD's aversion to significant alteration of cannabis policy, the lack of significant policy change under the CDA-led governments, and the continuity from Rutte I to Rutte II, when the PvdA replaced the CDA and PVV as the VVD's coalition partner. This reason is that political parties are discouraged from spending too much effort on changing cannabis policy, because it bears high costs, high risks and its rewards are uncertain.

It has high costs, because it takes a lot of time and effort, but also because it would likely take significant concessions on other topics to convince more skeptical coalition partners. It is also high-risk, for both camps. For pro-repression parties, domestic opposition is a large risk. As became visible when the closed club criterium was briefly implemented in 2012, mayors will likely serve as influential policy entrepreneurs arguing against restricting access to coffeeshops. If access to coffeeshops would be restricted even more, resistance would likely be broader. For pro-liberalization parties, international criticism and international law are the largest risks. Arguably, the risk of international pressure has decreased significantly as more countries have liberalized cannabis policy recently. But prohibition is, for now, still baked into international and European laws, and creating a regulated cannabis supply system would, at the very least, create a tension with these laws.³¹⁹

Finally, it is uncertain if cannabis policy change will be rewarded. As was shown in 2012, when coffeeshops in the southern provinces were briefly turned into closed clubs, limiting access to coffeeshops can have negative side effects like an increase in street dealing. And it is uncertain whether the creation of a regulated cannabis supply system for coffeeshops will have a noticeable impact on organized crime. Furthermore, it is doubtful whether radical cannabis policy change will be rewarded electorally. A 2012 poll found that 69 percent of Dutch voters supported either regulation or legalization of cannabis production. Even more saliently, a majority of CDA, VVD and PVV voters supported these options.³²⁰ Evidently, these people had not let their preferred party's stance on cannabis policy determine their choice. The likely reason for this lack of zeal is that most citizens, and even most cannabis smokers, are not confronted with the negative effects of the current cannabis

³¹⁹ Although it must be said that legal scholars continue to be divided on this issue: see, for instance Robin Hofmann, 'The 'Total-Legalization' of Cannabis in Germany: Legal Challenges and the EU Free Market Conundrum', *European Journal of Crime Criminal Law and Criminal Justice* 31:2 (2023), 173-196; but also the discussion between legal scholars in the comment section below this article: Kai Ambos, 'Neun seiten Substanzlosigkeit: Die Stellungnahme des „Fachbereich Europa“ des Bundestags zu EU-Recht und Cannabis-Legalisierung', <https://verfassungsblog.de/neun-seiten-substanzlosigkeit/>, 13-9-2022, consulted 6-5-2024.

³²⁰ Tom Blickman, 'Nederland is klaar om te reguleren, nu de landelijke politiek nog', *Socialisme en Democratie* 73:4 (2016), 66-77, 67.

policy. Users can freely buy and use their stuff, and most citizens do not experience coffeeshop-related nuisance or witness cannabis-related crime. Because users are not criminalized, cannabis policy in the Netherlands is also not connected to questions of social justice. There is a reason that cannabis policy is, at most, a paragraph in election programmes: most voters are far more interested in parties' standpoints on other subjects.

The high costs, high risks and uncertain rewards have certainly not discouraged all parties from supporting policy change. D66, for instance, seems to have made it one of their most important demands in the coalition negotiations of 2017. But the high costs, high risks and uncertain rewards of cannabis policy reform can help understand why the VVD preferred to continue the policy, and why CDA and PvdA preferred to focus their attention on other problems while in government. The VVD was not really convinced that liberalization would have significant positive effects anyway, and preferred to instead combat negative side effects of the tolerance policy, like nuisance. CDA and PvdA did want change, but prioritized other problems that they might have regarded as more urgent, more important or more likely to be rewarded electorally. Finally, in a way, CDA and PvdA might have profited from the status quo. Their stance on cannabis policy could serve as a way to profile themselves ideologically, and attract votes with promises of change. They could blame the VVD and the gridlock in parliament if these promises could not be kept.

3. International comparison

While the momentum for cannabis policy reform stagnated in the Netherlands, it accelerated in other parts of the world. In November 2012, the U.S. states of Colorado and Washington voted to legalize cannabis for recreational use.³²¹ Around the same time, the legislative process to do the same was underway in Uruguay: in 2014, the South American country became the first nation to legalize recreational cannabis use.³²² In 2018, in both Georgia and South Africa, court rulings made possession and use of cannabis legal.³²³ In the same year, a more extensive form of legalization came into force in Canada.³²⁴ In recent years, the wave of cannabis legalization has reached the European Union. Malta was first, in 2021, and was followed by Luxembourg in 2023 and Germany in 2024.³²⁵ There are significant differences between these different legalizations, however. In some places, like many U.S. states, cannabis is produced and sold commercially.³²⁶ In Canada and especially in Uruguay, the cannabis sector is more strongly regulated.³²⁷ In the European Union, finally, legalization has been more limited. As of now, no European country has legalized large-scale commercial growing and selling of recreational cannabis.

Despite these differences, there is one important similarity between all these countries and states. They have all made a significant step to liberalize cannabis policy. In the same period, the Netherlands has not gone farther than the starting of a limited-scale experiment with supplying decriminalized cannabis. So what caused cannabis policy liberalization to succeed in all those countries, while the situation has remained mostly static

³²¹ Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 17.

³²² Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018, 131.

³²³ Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 4.

³²⁴ Department of Justice Canada, 'Cannabis Legalization and Regulation', <https://www.justice.gc.ca/eng/cj-jp/cannabis/?wbdisable=true>, consulted 6-5-2024.

³²⁵ Government of Malta, *National drug policy 2023-2033*, 2023, 15; Cannabis information Luxembourg, 'Growing Cannabis at home' (1st stage), <https://cannabis-information.lu/en/growing-cannabis-at-home/>, consulted 6-5-2024; Bundesministerium für Gesundheit, 'Fragen und Antworten zum Cannabisgesetz', <https://www.bundesgesundheitsministerium.de/themen/cannabis/faq-cannabisgesetz>, consulted 6-5-2024.

³²⁶ Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 29-33.

³²⁷ Magdalena Cerdá and Beau Kilmer, 'Uruguay's middle-ground approach to cannabis legalization', *International Journal of Drug Policy* (2017), <http://dx.doi.org/10.1016/j.drugpo.2017.02.007>, 2; Benedikt Fischer, Cayley Russell and Neil Boyd, 'A century of cannabis control in Canada: a brief overview of history, context and policy frameworks from prohibition to legalization', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 89-115, 98.

in the Netherlands? To answer this question, I will compare the process towards legalization in several countries and states where cannabis has been legalized. From this comparison, I will distill factors leading to cannabis policy liberalization. The absence of these factors in the Netherlands may explain why such liberalization did not take place in the Netherlands.

3.1 Cannabis legalization around the world

The first leap: U.S. states

In the 20th century, the U.S. was the prime architect of the international prohibition of cannabis, pressuring other states to ratify the anti-drug treaties.³²⁸ But ironically, the wave of cannabis legalization started precisely there. In 2012, two of its states, Washington and Colorado, legalized use, cultivation and sale of cannabis for recreational use. This key moment had been decades in the making. In the 1960s and 1970s, cannabis, long associated with people from the lowest socio-economic levels, began to be used widely among middle and upper class youth. As they, too, now suffered from the very repressive American cannabis policy, discontent with the very repressive cannabis policy began to grow.³²⁹ In response, many states reduced criminal penalties for cannabis possession in 1970.³³⁰ Some, like Oregon, chose to decriminalize cannabis use and possession, and only imposed an administrative fine.³³¹ However, successive national governments remained strongly opposed to cannabis. On the national level cannabis was still firmly prohibited, and most states continued to criminalize use and possession.³³² In the 1980s, as president Ronald Reagan breathed new life into the ‘war on drugs’, several states which decriminalized cannabis in the 1970s even rescinded these policies.³³³

In the 1990s, a second wave of opposition to prohibition emerged. Proposals to repeal prohibition made it to the ballot in Alaska and Nevada in 2000 and 2006 respectively.³³⁴ However, these initiatives failed. But while recreational cannabis legalization

³²⁸ Jonas von Hoffmann, ‘“Someone has to be the First”: Tracing Uruguay’s Marijuana Legalisation Through Counterfactuals’, *Journal of Politics in Latin America* 12:2 (2020), 177–199, 180.

³²⁹ David Patton, ‘A history of United States Cannabis Law’, *Journal of Law and Health* 34:1 (2020), 1–30, 13–14.

³³⁰ *Ibidem*, 14

³³¹ Niamh Eastwood, ‘Cannabis decriminalization policies across the globe’, Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 133–153, 135.

³³² David Patton, ‘A history of United States Cannabis Law’, *Journal of Law and Health* 34:1 (2020), 1–30, 17–18.

³³³ Hugh Miller, *Narrative Politics in Public Policy: Legalizing Cannabis*, Cham 2020, 59.

³³⁴ Bryce Pardo, ‘The uneven repeal of cannabis prohibition in the United States’, in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11–38, 17.

was rejected, initiatives to legalize medical cannabis did succeed. Starting in California in 1996, more and more states legalized the production, sale and use of cannabis for medicinal use.³³⁵ In most of these states, access to medicinal cannabis was restricted, and cannabis policy remained quite restrictive overall.³³⁶ However, in some states, like California and Colorado, medical cannabis was not strictly regulated.³³⁷ This encouraged the emergence of a commercial industry for medical cannabis, which rapidly gained clients.³³⁸

Meanwhile, support for the legalization of recreational cannabis steadily increased through the 2000s.³³⁹ The exact influence of the legalization of medical cannabis on views on broader cannabis policy liberalization is hard to ascertain. But it seems likely that it significantly smoothed the way for legalization of recreational cannabis: it helped normalize cannabis, and showed that cannabis policy change could be implemented, and be successful.³⁴⁰ But a significant obstacle still remained for any further liberalization: the federal government. Under the Bush administration, federal authorities continued to attempt to enforce cannabis prohibition. Sometimes, dispensaries and cultivation operations which were legal under state law were still raided by federal authorities.³⁴¹

A crucial change came in 2009, when the new Democrat president Barack Obama came to power. His administration issued the so-called 'Ogden Memorandum', written by Deputy Attorney General David Ogden. The memorandum directed federal drug enforcement authorities to focus on high-level targets like organized criminal groups instead of individuals complying with state law.³⁴² In response, states started to issue explicit legal

³³⁵ Beau Kilmer and Robert MacCoun, 'How Medical Marijuana Smoothed the Transition to Marijuana Legalization in the United States', *Annual Review of Law and Social Science* 13 (2017), 181–202, 183.

³³⁶ Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 15.

³³⁷ Sam Kamin, 'Marijuana Regulation in the United States', in: Ernesto Savona, Mark Kleiman, Francesco Calderoni, *Dual Markets Comparative Approaches to Regulation*, Cham 2017, 105-120, 111; Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 13.

³³⁸ Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 13.

³³⁹ Beau Kilmer and Robert MacCoun, 'How Medical Marijuana Smoothed the Transition to Marijuana Legalization in the United States', *Annual Review of Law and Social Science* 13 (2017), 181–202, 187.

³⁴⁰ *Ibidem*, 192.

³⁴¹ Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 15.

³⁴² *Ibidem*, 13; David Ogden, 'Memorandum for Selected United State Attorneys on Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana', <https://www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states>, consulted 8-5-2024.

protection for commercial suppliers of medical cannabis, legitimizing them and allowing them to grow significantly.³⁴³ While not necessarily intended as such, the Ogden Memorandum opened the way to full legalization of cannabis in individual states.

While a first initiative to repeal cannabis prohibition in California in 2010 failed by a narrow margin, it did stimulate the debate about this issue.³⁴⁴ In 2012, the repeal of the cannabis prohibition was voted on in Colorado, Oregon and Washington, and accepted in Colorado and Washington.³⁴⁵ While it is impossible to say for certain what caused the pro-legalization campaign to succeed in these crucial first states, several factors seem to have played a role. Firstly, the populations of these states were already relatively progressive and less opposed to cannabis policy liberalization to start with.³⁴⁶ Secondly, there was a growing sense that prohibition was not only not working, but also having significant negative side effects. For instance, it contributed significantly to the over-policing of minorities.³⁴⁷ Moreover, it ensured no taxes could be levied on cannabis use.³⁴⁸ Thirdly, cannabis use was more and more normalized. As mentioned before, medical cannabis might have contributed to this normalization. Normalization was also helped by the campaigning tactics of pro-legalization activists. They strategically chose to dissociate their campaign from stereotypical cannabis culture. This way, the activists hoped to present cannabis use as something ordinary, which should not be criminalized, and take away resistance to legalization.³⁴⁹

In the last decade, many other states have followed the lead of Washington and Colorado. Since 2024, a majority of Americans live in a state where cannabis use is legal.³⁵⁰

³⁴³ Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 15.

³⁴⁴ Ibidem, 17.

³⁴⁵ Ibidem, 17.

³⁴⁶ Ivana Obradovic, 'From prohibition to regulation: A comparative analysis of the emergence and related outcomes of new legal cannabis policy models (Colorado, Washington State and Uruguay)', *International Journal of Drug Policy* 91 (2021) 102590, 2.

³⁴⁷ Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 12; Hugh Miller, *Narrative Politics in Public Policy: Legalizing Cannabis*, Cham 2020, 68-69.

³⁴⁸ Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 16.

³⁴⁹ Ivana Obradovic, 'From prohibition to regulation: A comparative analysis of the emergence and related outcomes of new legal cannabis policy models (Colorado, Washington State and Uruguay)', *International Journal of Drug Policy* 91 (2021) 102590, 3.

³⁵⁰ Pew Research Center, 'Most Americans now live in a legal marijuana state – and most have at least one dispensary in their county', <https://www.pewresearch.org/short-reads/2024/02/29/most-americans-now-live-in-a-legal-marijuana-state-and-most-have-at-least-one-dispensary-in-their-county/#:~:text=Since%20Colorado%20and%20Washington%20became.drug%20for%20medical%20use%20only>, consulted 26-5-2024.

The exact form which cannabis legalization has taken differs from state to state, but most states have favored private, for-profit models of cannabis supplying.³⁵¹ While cannabis remains illegal under federal law, there have been no attempts from the central government to re-enforce prohibition. Even the conservative Trump administration was unwilling to force the now mainstream, multi-billion dollar cannabis industry into illegality.³⁵²

The first country: Uruguay

There is a logical flow to the legalization of cannabis in U.S. states: public opinion was shifting, the Ogden Memorandum seemed to create political room and a majority voted to proceed. The process in Uruguay, the first country to legalize cannabis, was far more chaotic and unexpected. Like some U.S. states, Uruguay already had a history of decriminalized cannabis. In 1974, the military government determined that people only carrying enough cannabis for personal use would not be prosecuted. However, the exact amount of cannabis that was allowed was never specified, and therefore, some users were still criminalized.³⁵³ There was a network of activists who tried to promote a more liberal cannabis policy. But up to 2012, their efforts were mostly directed at creating room for home cultivation of cannabis. A system like the one which emerged from 2014 onwards, including state-regulated growth and sale of cannabis, was not on the policy agenda at all.³⁵⁴

Cannabis legalization emerged on the policy agenda suddenly and unexpectedly. In May 2012, the Uruguayan nation was shocked by the brutal murder of a restaurant worker by two young robbers. This incident drew renewed attention to the issue of insecurity, which had figured prominently in public debates for years.³⁵⁵ While the country was relatively safe compared to its neighbors, crime rates and the number of homicides were increasing.³⁵⁶ In the public perception, these crimes were in large part linked to a relatively novel drug, free base cocaine.³⁵⁷ In response to the public outrage following May 2012, the Uruguayan government, led by the left-wing Frente Amplia party, drafted a plan of action. Unexpectedly to many, in addition to harsher punishments for hard drug dealing, the creation of a legal

³⁵¹ Bryce Pardo, 'The uneven repeal of cannabis prohibition in the United States', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 11-38, 12.

³⁵² David Patton, 'A history of United States Cannabis Law', *Journal of Law and Health* 34:1 (2020), 1-30, 29-30.

³⁵³ Rosario Queirolo, 'Uruguay: the first country to legalize cannabis', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 116-130, 117.

³⁵⁴ Jonas von Hoffmann, "'Someone has to be the First": Tracing Uruguay's Marijuana Legalisation Through Counterfactuals', *Journal of Politics in Latin America* 12:2 (2020), 177-199, 188.

³⁵⁵ Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018, 82-83.

³⁵⁶ Ibidem, 83-84.

³⁵⁷ Ibidem, 84-85.

system for cannabis production and sale figured on this list.³⁵⁸ The plan originated from president José Mujica and a circle of his closest supporters, and came as a surprise for many in his party and government.³⁵⁹ Originally, it was planned that the system would be entirely regulated by the government: cannabis growing would remain prohibited for individuals or cannabis social clubs.³⁶⁰ The government claimed that this system would help against public insecurity, by depriving criminals of their source of income and keeping cannabis users away from hard drug dealers.³⁶¹

The announcement that cannabis would be regulated was only the start of the process of legalization, and significant barriers remained. There was no fleshed-out proposal yet, and many questions remained. Perhaps because of this, the announcement was met with criticism and skepticism, even among pro-reform activists, who were disappointed that home cultivation of cannabis would remain prohibited.³⁶² Moreover, the plans for cannabis legalization were not popular among the Uruguayans, with about 60 percent of the population opposing them.³⁶³ Finally, neighboring countries Brazil and Argentina, as well as the International Narcotics Control Board, voiced concerns.³⁶⁴ It was by no means certain that the plans would actually result in success, and the lack of support caused president Mujica to put the plans on hold for a time.³⁶⁵

After this setback, the plans were amended to include home cultivation, and activists launched a campaign in support of legalization.³⁶⁶ Although a majority of Uruguayans remained opposed to the plans, president Mujica eventually decided to push on, even

³⁵⁸ Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018, 88.

³⁵⁹ Ibidem.

³⁶⁰ Jonas von Hoffmann, “‘Someone has to be the First’: Tracing Uruguay’s Marijuana Legalisation Through Counterfactuals”, *Journal of Politics in Latin America* 12:2 (2020), 177–199, 189.

³⁶¹ Ibidem, 184.

³⁶² Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018, 90.

³⁶³ Jonas von Hoffmann, “‘Someone has to be the First’: Tracing Uruguay’s Marijuana Legalisation Through Counterfactuals”, *Journal of Politics in Latin America* 12:2 (2020), 177–199, 184.

³⁶⁴ John Walsh and Geoff Ramsey, ‘Uruguay’s Drug Policy: Major Innovations, Major Challenges’, <https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf>, consulted 26-5-2024, 8.

³⁶⁵ Jonas von Hoffmann, “‘Someone has to be the First’: Tracing Uruguay’s Marijuana Legalisation Through Counterfactuals”, *Journal of Politics in Latin America* 12:2 (2020), 177–199, 184; John Walsh and Geoff Ramsey, ‘Uruguay’s Drug Policy: Major Innovations, Major Challenges’, <https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf>, consulted 26-5-2024, 6.

³⁶⁶ Jonas von Hoffmann, “‘Someone has to be the First’: Tracing Uruguay’s Marijuana Legalisation Through Counterfactuals”, *Journal of Politics in Latin America* 12:2 (2020), 177–199, 185; John Walsh and Geoff Ramsey, ‘Uruguay’s Drug Policy: Major Innovations, Major Challenges’, <https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf>, consulted 26-5-2024, 6.

coercing two skeptical legislators from his own party to vote in favor of legalization.³⁶⁷ The bill was approved by the Chamber of Deputies in July 2013, and by the Senate in December 2013.³⁶⁸ From August 2014 onwards, cultivation of up to six cannabis plants was allowed at home; later that year, the first Cannabis Social Clubs were registered.³⁶⁹ During the 2014 elections, it briefly seemed that the new leader of Frente Amplio, Tabaré Vázquez, would not continue his predecessor's policy, but in the end, the implementation of the legalization continued.³⁷⁰ In 2017, cannabis sales via pharmacies started.³⁷¹

Interestingly, just like in the U.S., international law and international pressure seems to have played a limited role in the debates about legalization in Uruguay. This was probably in large part due to an atmosphere of change on the international level. In 2011, the Global Commission on Drug Policy condemned the war on drugs as a failure, and in the Summit of the Americas in 2012, several heads of state called for a region-wide debate on alternatives to the war on drugs.³⁷² Finally, after the repeal of prohibition in Colorado and Washington, the United States could no longer position itself as the defender of the prohibitive system.³⁷³ All these events seemed to show that the prohibitive system was toppling, and that Uruguay could proceed with cannabis legalization without isolating itself internationally.

All in all, Uruguay's road to cannabis legalization was quite unique. In large part, legalization was initiated and pushed through from the top, and it was continued not because of, but in spite of, popular opinion. The strong connection with gang-related violence also makes the Uruguayan case different from most other places where cannabis was legalized, though it has interesting parallels with the Dutch case. The form legalization itself took was also distinctive, the state taking a prominent role in regulating the market.

³⁶⁷ Jonas von Hoffmann, "'Someone has to be the First': Tracing Uruguay's Marijuana Legalisation Through Counterfactuals', *Journal of Politics in Latin America* 12:2 (2020), 177–199, 186.

³⁶⁸ Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018, 170.

³⁶⁹ Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018, 131.

³⁷⁰ John Walsh and Geoff Ramsey, 'Uruguay's Drug Policy: Major Innovations, Major Challenges', <https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf>, consulted 26-5-2024, 10-11.

³⁷¹ Clara Musto, *Regulating Cannabis Markets: the construction of an innovative drug policy in Uruguay*, dissertation Kent and Utrecht 2018, 132.

³⁷² John Walsh and Geoff Ramsey, 'Uruguay's Drug Policy: Major Innovations, Major Challenges', <https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf>, consulted 26-5-2024, 5.

³⁷³ John Walsh and Geoff Ramsey, 'Uruguay's Drug Policy: Major Innovations, Major Challenges', <https://www.brookings.edu/wp-content/uploads/2016/07/Walsh-Uruguay-final.pdf>, consulted 26-5-2024, 11-12.

The first G7 nation: Canada

In 1923, Canada was one of the first nations to prohibit the use of cannabis.³⁷⁴ Interestingly, it was also early with considering decriminalization seriously and on a high level. Just like in the United States, cannabis use became popular among middle and high class youth in the 1960s. As arrests among this otherwise law-abiding group increased rapidly, the question was raised if cannabis prohibition wasn't doing more harm than good.³⁷⁵ In response, in 1969, the liberal government tasked a commission with investigating possible avenues to liberalize cannabis policy. Two years later, the majority of the commission members recommended decriminalization of cannabis; a minority even recommended full legalization.³⁷⁶ However, no political action followed. The liberal government had different priorities, and was out of power soon after.³⁷⁷ This political indifference was maintained until the late 1980s, when, influenced by the U.S., Canada's conservative government launched a 'war on drugs'.³⁷⁸ In the 1990s, there was a slight shift to leniency as judges got the option of not sentencing in simple possession cases. However, as users still got a criminal record, this did not mean an end to cannabis prohibition.³⁷⁹

In the early 2000s, just like in the 1970s, it seemed that Canadian cannabis policy might be liberalized. This time, not one, but two commissions were instated to investigate the matter: one from the House of Commons and one from the Senate. Both found that the prohibitive system, through its criminalization of otherwise law-abiding citizens, caused more harm than good. The House of Commons commission proposed to limit punishments for cannabis possession to administrative fines. The Senate commission even recommended legalization of cannabis.³⁸⁰ In early 2003, the Liberal Party introduced a decriminalization bill, which seemed to be sure to pass. However, just like in the 1970s, in the end, it all came to nothing. Pressure from the American Drug Enforcement Agency, slow proceedings in

³⁷⁴ Andrew Potter and Daniel Weinstock, *High Time: the Legalization and Regulation of Cannabis in Canada*, Montréal 2019, 10-11; Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 14-16.

³⁷⁵ Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 17.

³⁷⁶ Andrew Potter and Daniel Weinstock, *High Time: the Legalization and Regulation of Cannabis in Canada*, Montréal 2019, 12-14.

³⁷⁷ Ibidem, 13-14.

³⁷⁸ Ibidem, 14; Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 20.

³⁷⁹ Andrew Potter and Daniel Weinstock, *High Time: the Legalization and Regulation of Cannabis in Canada*, Montréal 2019, 14-15; Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 22.

³⁸⁰ Andrew Potter and Daniel Weinstock, *High Time: the Legalization and Regulation of Cannabis in Canada*, Montréal 2019, 16; Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 25.

parliament and political turmoil caused by leadership changes in the Liberal Party ensured that the bill did not pass before 2006, when the Conservatives took over. The new Conservative government rejected the decriminalization bill; the opportunity for cannabis policy liberalization had passed for the time.³⁸¹

In the background however, a significant development was taking place. In 2001, in response to a ruling of Ontario's court of Justice, Canada became the first nation to initiate a medical cannabis program.³⁸² At first, access was limited, but more court cases forced the government to make it more lenient.³⁸³ Ironically, it was during the 'anti-cannabis' Conservative government that medical cannabis access grew the most rapidly.³⁸⁴ Just like had happened in some U.S. states, medical cannabis became a big industry. Semi-legal 'dispensaries' emerged in cities, catering to a wide audience.³⁸⁵ The growing medical cannabis sector propelled the debate about cannabis forward, and also provided much of the infrastructure needed after legalization in 2018.³⁸⁶

In the 1970s and early 2000s, Canada had come very close to significant liberalization of cannabis policy. Each time, a lack of urgency among its main proponent, the Liberal Party, had prevented it from being implemented. In 2013, the new leader of the Liberal Party announced that he supported cannabis legalization, and this time the Liberal party put their money where their mouth was. Cannabis policy became a prominent topic in the 2015 election campaign, and a majority of Canadians supported some kind of cannabis policy liberalization.³⁸⁷ After the Liberal Party won the 2015 election, the new Trudeau government moved quickly. It set tight deadlines, and rapidly drafted a strategy for

³⁸¹ Andrew Potter and Daniel Weinstock, *High Time: the Legalization and Regulation of Cannabis in Canada*, Montréal 2019, 17.

³⁸² Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 26

³⁸³ Ibidem, 26; Benedikt Fischer, Cayley Russell and Neil Boyd, 'A century of cannabis control in Canada: a brief overview of history, context and policy frameworks from prohibition to legalization', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 89-115, 93-94.

³⁸⁴ Benedikt Fischer, Cayley Russell and Neil Boyd, 'A century of cannabis control in Canada: a brief overview of history, context and policy frameworks from prohibition to legalization', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 89-115, 94-95.

³⁸⁵ Ibidem, 95.

³⁸⁶ Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 27-29.

³⁸⁷ Benedikt Fischer, Cayley Russell and Neil Boyd, 'A century of cannabis control in Canada: a brief overview of history, context and policy frameworks from prohibition to legalization', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 89-115, 97; Andrew Potter and Daniel Weinstock, *High Time: the Legalization and Regulation of Cannabis in Canada*, Montréal 2019, 18-19; Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 28.

legalization.³⁸⁸ On 17 October 2018, less than three years after the elections, cannabis was legalized.³⁸⁹

Rejecting both the highly commercial models of cannabis legalization of many U.S. states, and the restrictive Uruguayan model, the Canadian government pursued an intermediate option. Under the Canadian system, the federal government licenses and regulates the cannabis growing industry. Many more detailed rules and regulations, however, are left to provincial governments to determine. For instance, the provinces determine the model of cannabis distribution and sale, if home growing is allowed, and if cannabis use is permitted in public. Therefore, there are significant differences in cannabis policy within the country.³⁹⁰

Interestingly, just like in the U.S. and Uruguay, the international dimension was largely glossed over in the Canadian debate about legalization. Legal experts have proposed multiple strategies for modifying Canada's treaty obligations to allow for the legalization.³⁹¹ However, Canada, claiming that its international legal duty to safeguard public health was more important than its duty to prohibit cannabis, has chosen to simply disregard the last duty.³⁹² It appears that the country is not facing a lot of negative effects from its legalization of cannabis. The only nation Canada shares a border with, the United States, is no longer in a position to complain, after allowing many of its states to legalize cannabis. Apparently, few other states feel called to criticize a nation with one of the largest economies in the world.

³⁸⁸ Benedikt Fischer, Cayley Russell and Neil Boyd, 'A century of cannabis control in Canada: a brief overview of history, context and policy frameworks from prohibition to legalization', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 89-115, 98; Andrew Potter and Daniel Weinstock, *High Time: the Legalization and Regulation of Cannabis in Canada*, Montréal 2019, 19; Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 29.

³⁸⁹ Department of Justice Canada, 'Cannabis Legalization and Regulation', <https://www.justice.gc.ca/eng/cj-jp/cannabis/?wbdisable=true>, consulted 6-5-2024.

³⁹⁰ Benedikt Fischer, Cayley Russell and Neil Boyd, 'A century of cannabis control in Canada: a brief overview of history, context and policy frameworks from prohibition to legalization', in: Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 89-115, 103; Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 72-73.

³⁹¹ For instance: David Bewley-Taylor, 'Canada, Cannabis Legalization and Uncertainty around the United Nations Drug Control Conventions', *Addiction* 113 (2018), 1224–1230, 1227; Antonia Eliason and Robert Howse, 'A Higher Authority: Canada's Cannabis Legalization in the Context of International Law', *Michigan Journal of International Law* 40:2 (2019), 327-383, 351.

³⁹² Robin Hofmann, 'The 'Total-Legalization' of Cannabis in Germany: Legal Challenges and the EU Free Market Conundrum', *European Journal of Crime Criminal Law and Criminal Justice* 31:2 (2023), 173-196, 178-179.

Legalization within the EU: the case of Germany

The wave of cannabis policy liberalization which started from 2012 onwards did not remain limited to the western hemisphere. There were also significant developments in the European Union. In December 2021, Malta became the first nation to legalize cannabis: from then on, its use and limited-scale cultivation at home or in associations known as ‘cannabis social clubs’ was allowed.³⁹³ In July 2023, Luxembourg followed with a more restrictive legalization which only allowed possession, limited-scale growing and use in homes, not in public spaces.³⁹⁴ The legalizations of cannabis in Malta and Luxembourg were important symbolic moments: they showed that a limited-scale legalization of cannabis was possible even within the restrictive framework of European Union law. However, these events were not nearly as significant as the announcement in 2021 that Germany, under a new left-liberal government, would start the process to legalize cannabis. Cannabis policy reform in such a large, powerful nation could have effects in the whole EU.³⁹⁵ Moreover, the German government had more ambitious plans than Malta and Luxembourg: it wanted to create a legalized commercial system for producing and selling cannabis.³⁹⁶

Before discussing the process towards legalization in Germany, I will briefly describe the history of German cannabis policy. Germany’s prohibitive stance on cannabis was a reaction to the tremendous increase in cannabis use among youth protest movements in the late 1960s. It was hoped that a strict stance, combined with harsh sentencing of drug dealers, would discourage people from using cannabis. However, this proved to be idle hope, as use rates continued to climb.³⁹⁷ In the 1990s, the prohibitive cannabis policy was softened somewhat. This was in large part due to a landmark judgment from the Federal Constitutional Court in 1994. Though the court ruled that the prohibitive system did not violate the constitution, it also determined that there should be no punishment in cases involving minor amounts of cannabis. What exactly constituted a ‘minor amount’ was to be determined by the federal states, which led to significant regional differences in cannabis

³⁹³ Government of Malta, *National drug policy 2023-2033*, 2023, 15.

³⁹⁴ Cannabis information Luxembourg, ‘Growing Cannabis at home’ (1st stage), <https://cannabis-information.lu/en/growing-cannabis-at-home/>, consulted 6-5-2024.

³⁹⁵ Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 88.

³⁹⁶ SPD, Bündnis 90/Die Grünen, FDP, Mehr Fortschritt wagen: Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag 2021-2025, via: <https://cms.gruene.de/uploads/assets/Koalitionsvertrag-SPD-GRUENE-FDP-2021-2025.pdf>, consulted 6-5-2024.

³⁹⁷ Tilmann Holzer, ‘German drug policy’, in: Renaud Colson and Henri Bergeron (eds.), *European Drug Policies: the Ways of Reform*, New York 2017, 241-253, 100-113, 106-107.

policy.³⁹⁸ Some states, like Schleswig-Holstein, wanted to go even further and experiment with a regulated cannabis supply system, but this was blocked by the federal Opium Agency in 1997.³⁹⁹

The debate about cannabis policy liberalization received a new impulse in the 2010s. Left-wing parties Die Linke and Die Grünen made cannabis policy liberalization one of their key standpoints. In 2014, a group of 122 criminal law professors submitted a resolution calling attention to the unintended harmful effects of criminalizing cannabis. In the following year, Die Linke and Die Grünen also introduced a law proposal which would create a regulated market for cannabis.⁴⁰⁰ While this draft was rejected by a majority of the left-wing SPD and the Christian democrat CDU/CSU in 2017, momentum for cannabis policy liberalization continued to grow.⁴⁰¹ In reaction to a ruling of the German Constitutional Court in 2016, medicinal cannabis was legalized in 2017.⁴⁰² Moreover, political support increased. The liberal FDP started supporting cannabis legalization in December 2017, and in 2020, the SPD followed.⁴⁰³ When the SPD, FDP and Die Grünen formed a coalition in 2021, it seemed that all lights were green for a reform of cannabis policy.

The new left-liberal government had ambitious plans. Not only was cannabis use to be legalized, a strictly regulated commercial market for cannabis should also be created.⁴⁰⁴ The coalition explicitly wanted to avoid the ‘back door problem’, citing the Netherlands as an example of how not to legalize cannabis.⁴⁰⁵ However, they were confronted with the same barrier that the Dutch had found more than twenty years prior: international legal obligations. A debate about the admissibility of full legalization under EU law ensued among legal

³⁹⁸ Tilmann Holzer, ‘German drug policy’, in: Renaud Colson and Henri Bergeron (eds.), *European Drug Policies: the Ways of Reform*, New York 2017, 241-253, 100-113, 109-110; Stefanie Kemme, Kristin Pfeffer, Luise von Rodbertus, ‘Cannabis policy reform in Germany: Political and constitutional discourses on decriminalisation and regulation strategies’, *Bergen Journal of Criminal Law and Criminal Justice*, 9:1 (2021), 11-41, 5.

³⁹⁹ Tilmann Holzer, ‘German drug policy’, in: Renaud Colson and Henri Bergeron (eds.), *European Drug Policies: the Ways of Reform*, New York 2017, 241-253, 100-113, 110.

⁴⁰⁰ Tilmann Holzer, ‘German drug policy’, in: Renaud Colson and Henri Bergeron (eds.), *European Drug Policies: the Ways of Reform*, New York 2017, 241-253, 100-113, 110; Stefanie Kemme, Kristin Pfeffer, Luise von Rodbertus, ‘Cannabis policy reform in Germany: Political and constitutional discourses on decriminalisation and regulation strategies’, *Bergen Journal of Criminal Law and Criminal Justice*, 9:1 (2021), 11-41, 24.

⁴⁰¹ Stefanie Kemme, Kristin Pfeffer, Luise von Rodbertus, ‘Cannabis policy reform in Germany: Political and constitutional discourses on decriminalisation and regulation strategies’, *Bergen Journal of Criminal Law and Criminal Justice*, 9:1 (2021), 11-41, 25.

⁴⁰² *Ibidem*, 6.

⁴⁰³ *Ibidem*, 25-26.

⁴⁰⁴ SPD, Bündnis 90/Die Grünen, FDP, Mehr Fortschritt wagen: Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, Koalitionsvertrag 2021-2025, via: <https://cms.gruene.de/uploads/assets/Koalitionsvertrag-SPD-GRUENE-FDP-2021-2025.pdf>, consulted 6-5-2024.

⁴⁰⁵ NOS, ‘Duits wietplan bekend: Nederland ‘als voorbeeld hoe het niet moet’’, <https://nos.nl/artikel/2471171-duits-wietplan-bekend-nederland-als-voorbeeld-hoe-het-niet-moet>, 12-4-2023, consulted 6-5-2024.

experts.⁴⁰⁶ The German government decided not to risk breaching EU law. The plans were toned down, and divided in two ‘pillars’. The first pillar consists of the less controversial legalization of cannabis use, home cultivation and cultivation in ‘cannabis social clubs’. The second entails a large-scale experiment with a regulated cannabis supply system in federal states.⁴⁰⁷

The first pillar has been approved by the parliament and the Senate, and the use and home cultivation of cannabis has been legal since 1 April 2024. In July, legalization of Cannabis Social Clubs will follow.⁴⁰⁸ However, if the second pillar will also be implemented is still unknown. Without it, ironically, German cannabis policy faces a similar problem as the Dutch system. Many cannabis users will probably not go through the time-consuming effort of growing cannabis themselves or registering at a Cannabis Social Club, and instead will continue to buy black market cannabis. Therefore, it seems likely that, just like in the Netherlands, the majority of consumed cannabis will still be illegally cultivated and sold.

It is doubtful whether Germany has actually ‘overtaken’ the Netherlands’ liberal drug policy. Whether the use and possession of cannabis is legal or decriminalized is hardly relevant for the average user, and Germany still has no tolerated cannabis selling points comparable to the Dutch coffeeshops. The only more liberal elements are the higher amounts that can legally be carried (25 grams compared to 5 in the Netherlands), and the legality of cannabis social clubs.

The new government’s announcement in 2021 that cannabis would be legalized created high expectations. It seemed that legalization of cannabis in this large, influential nation in the heart of the EU might herald a change of the international system of prohibition-centered rules. Perhaps it could even lead to a total collapse of the EU’s prohibition-based rules.⁴⁰⁹ There is no doubt that Germany’s decision to legalize cannabis was a significant moment, and it is too early to say what the end results may be. That being said, the legalization of cannabis in Germany seems more like a sign of the enduring

⁴⁰⁶ For instance, on verfassungsblog.de, a blog about German constitutional law: Kai Ambos, ‘Neun seiten Substanzlosigkeit: Die Stellungnahme des „Fachbereich Europa“ des Bundestags zu EU-Recht und Cannabis-Legalisierung’, <https://verfassungsblog.de/neun-seiten-substanzlosigkeit/>, 13-9-2022, consulted 6-5-2024. Also see the comments below by other legal experts like Robin Hofman.

⁴⁰⁷ Bundesministerium für Gesundheit, ‘Fragen und Antworten zum Cannabisgesetz’, <https://www.bundesgesundheitsministerium.de/themen/cannabis/faq-cannabisgesetz>, consulted 6-5-2024; Euractiv.de, ‘Cannabis-Legalisierung: Ampel rudert wegen EU-Recht zurück’, https://www.euractiv.de/section/gesundheit/news/cannabis-legalisierung-ampel-rudert-wegen-eu-recht-zurueck/?_ga=2.111030657.54387764.1715006196-534076980.1715006196, consulted 6-5-2024.

⁴⁰⁸ Bundesministerium für Gesundheit, ‘Fragen und Antworten zum Cannabisgesetz’, <https://www.bundesgesundheitsministerium.de/themen/cannabis/faq-cannabisgesetz>, consulted 6-5-2024.

⁴⁰⁹ As suggested, for instance, by: Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 88-89.

strength of the prohibitive international system than the beginning of its collapse. That will undoubtedly have been noted by lawmakers in the Netherlands.

3.2 Comparison

The form of legalization

Before discussing the factors leading to cannabis legalization in these cases, it is important to clearly state that not all forms of legalization are created equal. Even within countries, there are often differences, with different states or provinces implementing different regulations. It is crucial to ascertain what exactly is meant with 'cannabis legalization' before being able to compare countries. A comparison between the Netherlands and Luxembourg illustrates this well. While use of cannabis might technically be illegal in the Netherlands, in many towns and cities, someone lighting up a joint on the street in front of a police station will not get in trouble. In Luxembourg, where a form of cannabis legalization has been implemented, such behavior would result in a fine. There, cannabis use at home is legalized, but smoking it in public is still illegal.⁴¹⁰ This example shows that a country where some form of legalization has been implemented can have a less liberal cannabis policy than a country where it is technically illegal, but decriminalized. When proponents of cannabis policy liberalization in the Netherlands talk about 'legalization', they do not mean a legalization like in Luxembourg. Such a legalization would in effect make Dutch cannabis less liberal, not more.

For the comparison with the Netherlands, it is important to make a division between countries and states where only the use of cannabis is legal (partial legalization), and those where large-scale production and supplying are also legalized in some way (full legalization). A legalization of use only is arguably not more liberal than the decriminalization-based policy of the Netherlands. The debate in the Netherlands is also not about this form of legalization, because it would not result in large changes, nor in solving the problems plaguing the current policy. Instead, proponents of cannabis policy strive for a legalization of the second variety; a situation where some kind of legal way of producing cannabis is realized.

U.S. states, Uruguay and Canada have all created some form of legalized supply system for cannabis, which puts them in the 'full legalization' category. There are still large differences between these cases, however. In many U.S. states, not just cannabis use is legalized, but also production and sale. There, the cannabis market is relatively free and

⁴¹⁰ Luxembourg Police, 'Drugs', <https://police.public.lu/en/legislation/stupefiants.html>, consulted 7-5-2024.

highly commercialized. In Uruguay, on the other hand, the government is far more involved with the supplying of cannabis. Canada has opted for an intermediate option, creating a highly regulated supply system, with distribution systems differing between provinces.

European countries that have legalized cannabis have a significantly more restricted form of legalization. This is most extreme in Luxembourg, where use is only legal at home, and the only legal way to obtain cannabis is to grow it yourself. In Malta, public use also remains illegal. But in addition to home growing, cannabis users can unite in Cannabis Social Clubs, which gives them a less labor-intensive way of sourcing cannabis. Germany's cannabis policy, finally, allows home growing and Cannabis Social Clubs, and also allows public use, except in the vicinity of schools and playgrounds.⁴¹¹ None of these countries allow commercial sale and production of cannabis, at least for now. This might change in the future, however: Germany still has the ambition to implement a more large-scale method of supplying.⁴¹² It remains to be seen, however, if international law and the political situation will allow this to happen.

Cannabis policy before legalization

In all cases, some form of prohibition existed at the time of cannabis legalization, but this prohibition was not absolute everywhere. Firstly, in some cases, there was some form of decriminalization, like in Oregon, Uruguay and Germany. However, this decriminalization was in no case as far-reaching as the decriminalization in the Netherlands. In Oregon, cannabis possession was still subject to administrative fines. In Uruguay, the decriminalization policy was so vaguely formulated that in some cases, cannabis users were still criminalized. And in all cases, only possession and use of cannabis were decriminalized. All these forms of decriminalization differed significantly from the Dutch 'tolerance policy', which not only does not sanction possession of small amounts of cannabis, but also permits the sale of cannabis in conditionally tolerated 'coffeeshops'.

A second derogation of the more or less prohibitive systems present before legalization was medical cannabis. In many U.S. states, Canada and Germany, medical cannabis was legalized before recreational cannabis. It has been suggested that the admission of medical cannabis played a significant role in clearing the way for cannabis legalization. Medical cannabis provided a pre-existing infrastructure for the production and

⁴¹¹ Bundesministerium für Gesundheit, 'Fragen und Antworten zum Cannabisgesetz', <https://www.bundesgesundheitsministerium.de/themen/cannabis/faq-cannabisgesetz>, consulted 6-5-2024

⁴¹² Bundesministerium für Gesundheit, 'Fragen und Antworten zum Cannabisgesetz', <https://www.bundesgesundheitsministerium.de/themen/cannabis/faq-cannabisgesetz>, consulted 6-5-2024.

distribution of cannabis, which made switching to a legal system easier and more feasible. It also seems likely that legalization of medical cannabis helped normalize cannabis, decreasing resistance to legalization of recreational cannabis use.⁴¹³ However, legalization of medical cannabis is clearly not an absolute precondition to legalize recreational cannabis; Uruguay did not have legal medical cannabis prior to legalization of recreational cannabis use. Moreover, medical cannabis legalization in Germany only took place a few years before full legalization, so its effects did not have much time to materialize.

In conclusion, states and countries which have implemented some form of cannabis legalization had varying cannabis policies before legalization was implemented. In Oregon, Uruguay and Germany, cannabis possession for personal use had been decriminalized in some form, though not nearly to the extent that it had happened in the Netherlands. No such decriminalization had taken place in Canada. Canada, together with many U.S. states and Germany, legalized medical cannabis before recreational cannabis, unlike Uruguay. The variety of the situations before legalization in all these cases suggests that this factor was not of crucial importance for causing cannabis to be fully legalized. However, the cannabis policy before legalization did influence the impetus for legalization.

The impetus for legalization

The exact impetus for cannabis legalization is not that easy to identify. In one case, multiple arguments are used for legalization, and it is not always clear which ones were decisive in convincing voters or politicians. However, it is clear that there is a significant difference between U.S. states, Canada and Germany on the one hand, and Uruguay on the other hand. In U.S. states, Canada and Germany, cannabis policy change followed an election campaign, in which cannabis policy played a large role. It is impossible to say which arguments of pro-legalization advocates were decisive. However, it seems most of their tactics were geared towards normalizing cannabis use and emphasizing the negative side effects of the prohibitive system, like the criminalization of users.

In Uruguay, the impetus for the start of the legalization process is easier to ascertain. The plans for legalization were announced in response to an incident of violent crime, and legalization was meant to reduce revenue of the black market. President Mujica, who was responsible for the plan's creation and played a decisive role in pushing it through, was mainly motivated by the desire to combat organized crime. Of course, this does not mean that other reasons did not play a role. For instance, cannabis activists were more strongly

⁴¹³ Daniel Alati, *Drug Legalization in Federalist Constitutional Democracies: The Canadian Cannabis Case Study in Comparative Context*, London/New York 2023, 27-29; Beau Kilmer and Robert MacCoun, 'How Medical Marijuana Smoothed the Transition to Marijuana Legalization in the United States', *Annual Review of Law and Social Science* 13 (2017), 181–202, 192.

motivated by a desire to normalize cannabis and gain the right to cultivate it. It is quite likely that legalization would not have taken place without their support. Still, without the sudden increase in attention to organized crime, full cannabis legalization would likely not have ended up at the top of the policy agenda, if it would have been there at all.

All analyzed cases have in common that the process of legalization was, in large part, a fight to get rid of prohibition. Normalization of cannabis aimed to diffuse the prohibitionist ideas that cannabis was always harmful, to take away support for prohibition. And in all cases, negative side effects of prohibition were an important motivator for change. In U.S. states, Canada and Germany, ending the criminalization of cannabis users was an important argument. In Uruguay, legalization aimed to end the situation that cannabis users could only buy their supplies on the black market.

In the Netherlands, only this last element plays a significant role in the debate about cannabis legalization. Many other arguments that were successful in U.S. states, Uruguay, Canada and Germany are not really relevant for the Netherlands. Because there is already such a far-ranging decriminalization policy, the position of cannabis users is not really a reason to fight for cannabis legalization. Users can already smoke cannabis freely, and even buy it at tolerated and regulated coffeeshops, without being criminalized. The argument that users have to be kept away from hard drug dealers also does not apply: the separation of markets for hard- and soft drugs are already ingrained in Dutch cannabis policy since the 1970s. This might work against cannabis policy advocates in the Netherlands. While they do not have to fight as hard to normalize cannabis, they cannot use arguments that were quite successful in causing cannabis to be legalized elsewhere.

Political receptiveness

The identification of problems with the current policy, and the formulation of legalization as the solution to these problems, is not enough to change cannabis policy. After this, legalization will still have to go through the legislative procedure. To successfully do this, it is not enough if the internal political situation is receptive. There should also be no blocking influence from federal or international law and pressure.

Internal political receptiveness

The processes of legalization, and its political reception, were very different in the discussed cases. In most U.S. states, legalization was demanded by voters via a referendum. In Uruguay it was largely a top-down process driven by the president, who was able to push through a policy without support from the majority of his populace. In Canada and Germany it was decided on by a newly elected majority government, after an election campaign in

which the issue of cannabis policy played an important role. The history of the debate about cannabis policy liberalization also varied significantly. The most extreme examples are on the one hand Canada, in which decriminalization had been proposed on a high level already in the 1970s and 2000s, and on the other Uruguay, where even most cannabis activists did not really advocate for full cannabis legalization before 2012.

In all cases, just having support, and the emergence of a policy window was not enough. A push for cannabis policy liberalization needs to be determined and sustained: otherwise, it can easily get stranded. This played less of a role in the U.S.; after the referendum to legalize cannabis passed, policymakers had little choice but to comply with the voters' choice. However, in Uruguay, a lack of support from the population and from two legislators from the ruling party almost ended legalization before it began; only president Mujica's personal determination saved the plans. And in Canada, a lack of persistence from the pro-liberalization Liberal party ensured cannabis policy liberalization did not materialize in the 1970s and 2000s.

One important common element in all cases is the involvement of left-wing and liberal parties in legalization. It was the liberal and progressive U.S. states that started the wave of legalizations in the U.S., in Uruguay and Canada left-wing parties initiated cannabis policy liberalization, and in Germany it was a left-liberal coalition which legalized cannabis. This is partly mirrored in the Netherlands. Cannabis decriminalization was initiated under a coalition of left-wing and Christian Democrat parties. In the decades since, left-wing parties have been the main proponents of cannabis policy liberalization. While there have been conservative pro-liberalization parties in the Netherlands, such as the LPF, their influence on the debate about cannabis policy has generally been limited.

International law and foreign pressure

Even when the international political situation is receptive to policy change, international factors can still block it. As seen in chapter one, this was one of the most important reasons no cannabis policy liberalization took place in the 1990s in the Netherlands. And in other cases, the influence of the international situation is also visible. In the beginning of the 2000s, a promising decriminalization bill was held up in the Canadian parliament, in part due to pressure from the U.S. Drug Enforcement Agency. Ironically, international concerns hardly seem to have played a role in the U.S. itself. However, from the point of view of the individual states, there was something similar: influence of the federal government. This too, was a form of external pressure which quite likely would have blocked legalization in an individual state. This pressure was taken away by the Ogden Memorandum in 2008, which states interpreted as a *carte blanche* for determining their own cannabis policy.

This had consequences beyond the U.S. After U.S. states started legalizing cannabis, the U.S. itself could hardly protest when other nations did so as well. The removal of the U.S. as the prime enforcer of an international prohibitionist system made cannabis legalization in Uruguay and Canada significantly easier. However, the new position of the Americans was not enough to take away all barriers to cannabis legalization in the European Union. Here, international law remains a formidable barrier. Germany's left-liberal government had ambitious plans at first, including the creation of a regulated commercial market for cannabis products. However, just like the Netherlands almost 3 decades prior, they found that they ran the risk of violating their international legal obligations. Now, cannabis use and limited-scale growing might be legal, but the new cannabis policy is still significantly less liberal than its makers originally intended. While international law and pressure has not completely stopped cannabis legalization in Germany, it has significantly limited its extent.

3.3 Common factors

At a first glance, there are more differences than similarities between the discussed cases. There are many ways to legalize cannabis, and many roads towards it. The initial policies differed significantly: in some U.S. states, Uruguay and Germany, some kind of decriminalization of cannabis possession was already in place, in the other cases it was not. In some U.S. states, Canada and Germany, medical cannabis also played some role in paving the way for legalization of recreational cannabis: in Uruguay it did not. The political process to legalize cannabis was also varied: in some cases, it followed a plebiscite, in others it was a decision by a majority government and there are also other cases where legalization was the result of a court ruling.⁴¹⁴

But there are also similarities. All these states and countries were dealing with the same problem. They wanted to end the negative effects of prohibition, like the criminalization of users and the fueling of a black market. However, they had to deal with the risk that liberalization would have negative effects. For instance, commercialization of cannabis had the risk of leading to more problematic use. Another negative effect could be the breaking of international law. And many legalizing states also did not want public use of cannabis to become ubiquitous, especially near children. Different perspectives on this shared dilemma, and the very different political contexts, led to very different outcomes. But in all cases, some kind of regulations were put in place to attempt to limit potential negative effects. For

⁴¹⁴ Tom Decorte, Simon Lenton and Chris Wilkins (eds.), *Legalizing Cannabis: Experiences, Lessons and Scenarios*, New York 2020, 4.

instance, in Uruguay the new cannabis supply system was strictly regulated. And the German government limited its ambitions in order not to break international and European law.

The resulting cannabis policies can broadly be divided into two forms. Firstly, full legalization, not only of cannabis use, but also production and sale. This model, with varying degrees of limiting regulations, has been implemented in many U.S. states, Uruguay and Canada. Under this model, users are no longer criminalized, and they can obtain their cannabis from an entirely legal market. Secondly, there is partial legalization, which only legalizes cannabis use, and provides only limited ways for obtaining cannabis legally. This last form has been implemented in Malta, Luxembourg and Germany. This form of legalization avoids criminalization of users. However, it has the drawback that legal access to cannabis is so restricted that it is likely that many users will turn to the black market. While cannabis has not been legalized in the Netherlands, the country is in a similar situation as countries with partial legalization. Because cannabis use is decriminalized, and users can easily access cannabis via the 'coffeeshops', the situation of cannabis users is just as good, if not better than in those countries. However, without a legal or decriminalized way to grow or supply cannabis, the black market flourishes.

Proponents of cannabis policy liberalization in the Netherlands are in the rather unique situation that they are trying to move from a policy similar to partial legalization to one similar to full legalization. This also leads to the debate being quite different. In U.S. states, Canada, Germany, and to a lesser extent Uruguay, improving the situation of cannabis users was an important argument for policy change. In the Netherlands, the debate about legalization is a rather technical debate about cannabis supply chains; the position of cannabis users barely plays a role. This way, proponents of legalization have lost one of their strongest arguments. This may also explain the relatively low importance of cannabis policy for determining voting behavior, and the limited role it plays in elections.

Can the Netherlands still move to a situation similar to full legalization? As Uruguay has shown, the perceived need to fight cannabis-related crime can also be a powerful impetus for moving to a system of full legalization. But the political process towards legalization in Uruguay was atypical and unlikely to be replicated in the Netherlands. And as Germany has shown, the international legal system of prohibition still holds considerable sway in the European Union. Legalization German-style would, in practice, hardly make Dutch cannabis policy more liberal. And the fact that Germany, which is far more powerful and influential than the Netherlands, has not managed to take away the barrier of international law does not bode well for the Netherlands' prospects.

4. Conclusion

In the 1990s, it seemed that the Dutch ‘tolerance policy’ for cannabis was reaching its expiration date, and a large majority of parliamentarians thought it was time for change. In 1994, when a left-liberal coalition came to power, it seemed that proponents of further liberalization would win out. But the legalization or decriminalization of cannabis production and supplying they desired did not take place. Instead, cannabis policy was made less liberal. The tolerated cannabis-selling ‘coffeeshops’ had to conform to stricter regulations, and the maximum amount of cannabis a person was allowed to possess was decreased. Since then, this less liberal ‘tolerance policy’ has been continued. And when other states and countries started to legalize cannabis from 2012 onwards, the Netherlands still stuck with its ‘tolerance policy’, even though a majority of parliamentarians opposed it.

This thesis set out to identify the factors that caused the curious absence of liberalization, and even de-liberalization, of Dutch cannabis policy, during a time in which cannabis policy was liberalized in many other countries. Using parliamentary debates as its most important source, the study utilized Kingdon’s Multiple Streams Theory to help identify these factors. Finally, it contrasted the political process in the Netherlands with that in states and countries where cannabis was legalized.

The thesis found that cannabis policy reform in the Netherlands did not fail for an absence of attention, problem recognition or alternatives. Firstly, there was enough attention. The subject of cannabis policy reform was regularly addressed in debates, sometimes even in debates unrelated to drug policy. Several times, mayors, who had to implement the drug policy on the local level, called for policy change. Cannabis policy was not always at the top of the policy agenda, but certainly often enough for this factor not to contribute to the lack of policy change.

Secondly, there has been no lack of problem recognition. Every political party recognized that there were significant problems with the ‘tolerance policy’, and for the most part, they even recognized the same problems. In the 1990s, there was a wide consensus that coffeeshops caused too much nuisance, though this consensus later broke down. Throughout the period, the problem of organized crime was a priority for all parties. Only the question if tolerating ‘coffeeshops’ to sell cannabis condoned drug use was seriously debated. The most important disagreement, however, was on how to tackle all these problems.

This brings us to the third thing of which there was no shortage in Dutch parliamentary debates about cannabis policy: alternatives. These can be separated into three groups. Firstly, the liberalizing alternatives. These were either a full legalization of

cannabis, including production and supplying, or the creation of a decriminalized system for producing cannabis and supplying it to coffeeshops. These two alternatives were mostly supported by progressive, left-wing parties. They focused on solving the ‘back door problem’, the paradoxical situation that sale of cannabis in coffeeshops was allowed, but supplying these coffeeshops was not.

There were also several repressive policy alternatives. The first repressive alternative, proposed by CDA, was the closing of all coffeeshops; thereby eliminating their nuisance and ensuring they did not entice anyone to do drugs. This alternative had a more radical counterpart: ending the tolerance policy altogether. This alternative was regularly put forward by small Christian Democrat parties like SGP and ChristenUnie. The right-wing populist PVV also showed sympathy for ending the tolerance policy, and wanted to dramatically decrease the number of coffeeshops. Finally, there was a middle ground alternative, which was most strongly defended by the VVD. They called for a continuation of the ‘tolerance policy’, but combined with stricter regulations to decrease public nuisance and stronger measures to combat organized crime.

There was no shortage of attention, problem recognition and alternatives. Crucial, then, was the third stream of Kingdon’s theory, the receptiveness of the political situation. Under the first purple government, from 1994 to 1998, the internal political situation seemed quite receptive to cannabis policy liberalization. Pro-liberalization parties had the majority in the government, and held ministerial posts crucial for cannabis policy. However, the government found that the proposed legalization or decriminalization of cannabis supplying would not be compatible with international law. Moreover, the Netherlands came under a barrage of international criticism. Although it was largely focused on the existing cannabis policy, it was clear that further liberalization would result in even more international opposition. Faced with these international barriers, internal support for cannabis policy liberalization crumbled as well.

This is not a new story: the blocking influence of international law and international pressure have already been identified and described in many earlier works. However, the reason for the ensuing de-liberalization of cannabis policy, under the same government which originally planned to legalize or decriminalize large-scale cannabis production, has remained murky. This thesis has shown that nuisance from coffeeshops played a large role in this de-liberalization. Coffeeshops were an unforeseen consequence of cannabis decriminalization. As a result, they were regulated on the fly, which unsurprisingly caused problems. The coffeeshops also evoked resistance from local residents, who experienced nuisance from them. The exact causes of this nuisance are unclear, but the fact that coffeeshops were inherently linked to the criminal underworld probably played an important

role. Moreover, there were concerns that some coffeeshops were located too close to schools, and about the fact that some coffeeshops regularly broke the regulations, for instance by selling hard drugs.

Even the pro-liberalization parties in the first purple government felt that something had to be done about the nuisance. Even if their plans for legalization or decriminalization had been implemented, it seems likely that they would have still instated stricter regulations for coffeeshops, and supported the closure of non-compliant or unwanted coffeeshops by local authorities. More than liberalization, these parties supported regulation. Bringing cannabis cultivation out of the criminal underworld by decriminalizing or legalizing it was part of that regulation, but so was setting stricter regulations for coffeeshops. The resulting stricter tolerance policy was likely also influenced by the VVD's wishes, as the PvdA and D66 needed the VVD's support for any change to cannabis policy.

The strict tolerance policy as created by the first purple government was continued after the end of the left-liberal governments in 2002. This had much to do with a gridlock in parliament: neither proponents of liberalization, nor those supporting repression, had a majority. They would both need the support of the VVD, which for a long time was the only party with a moderate position. No policy reform in either direction could be possible without the VVD's acceptance. Up to 2006, the conservative-liberal party was somewhat sympathetic towards cannabis policy reform, but refused to support it, because the party feared that such a move would hurt the Netherlands' international standing. From 2006 to 2017, it chose a harder line, rejecting liberalization as ineffective and harmful and supporting repressive measures. The conservative liberal party even briefly significantly de-liberalized cannabis policy through a short-lived attempt to turn coffeeshops into closed clubs. Because of the VVD's change of position, international pressure was replaced by the internal political situation as the main factor blocking cannabis policy liberalization.

In 2017, the VVD's decisive power over cannabis policy was briefly broken. Parliamentarians who had split off from anti-liberalization parties backed a law which would create a decriminalized supply system for cannabis. But in the Senate, the gridlock persisted, so this proposal remained in limbo. Proponents of cannabis policy liberalization did get a consolation prize: a limited-scale experiment with a decriminalized cannabis supply system. However, this experiment only started recently, after many delays. In the meantime, it has diverted attention from a fully-fledged policy change.

A second explanation for the tolerance policy's endurance is the fact that large changes to cannabis policy would be costly, high-risk and its rewards were uncertain. It was costly, because it would take significant concessions on other subjects to convince more skeptical coalition partners. It would also have high risks of creating domestic or international

opposition. These costs and risks might have encouraged the VVD to stop supporting proposals for cannabis policy liberalization, and the CDA and PvdA to prioritize other issues. Even more so because there was no guarantee their solutions would work. Electorally, too, it is uncertain if policy change would bring significant rewards. Cannabis policy has never been one of the main election topics in the last decades, and seems to have little influence on the way people vote.

This lack of interest cannot be separated from the relatively good position that cannabis users already have under the tolerance policy. The international comparison has shown that cannabis users' rights were an important impetus for legalization in U.S. states, Canada and Germany, and to a lesser extent Uruguay. As the position of cannabis users is already quite good, this argument is not really relevant in the Dutch case, deriving proponents of liberalization from a powerful argument. While the case of Uruguay shows that concerns over organized crime can also serve as a powerful impetus for liberalization, the singularity of this case and the remaining blockades of international law make it doubtful if this can be replicated in the Netherlands.

Though the Netherlands' tolerance policy continues to have singular characteristics, like the semi-legal coffeeshops, it is no longer as unique as it was before the wave of cannabis legalizations started. It is in a similar situation as its big neighbor Germany, which has very recently implemented a partial legalization of cannabis. Germany, too, has improved the position of cannabis users, but legal access to cannabis is so limited that a black market will almost certainly endure. Just like the Netherlands in the 1990s, Germany has found that international law hinders any further liberalization of cannabis policy. As members of the EU, the Netherlands and Germany could not set aside these obligations as easily as U.S. states, Uruguay and Canada.

With an extensive analysis of parliamentary debates, this thesis has helped identify some major reasons for the lack of cannabis policy liberalization in the Netherlands in the past three decades. This may help policymakers, politicians and voters to gain a grounded comprehension of the problems which make cannabis policy such a complicated and difficult task. Understanding what factors caused previous attempts to change cannabis policy to fail might help make better and more effective decisions for the future. This thesis can also help better understand why the current policy has the somewhat paradoxical characteristics it is infamous for. Finally, this thesis might also be informative for researchers and policymakers outside of the Netherlands. As mentioned before, countries like Germany are now in a similar situation as the Netherlands, and have encountered similar problems. Getting to

know the causes of the tolerance policy's endurance might also improve their comprehension of the situation in their own country.

However, because of time constraints, there is also much that this thesis could not do. Firstly, this thesis has only investigated parliamentary debates and policy reports. While these are very important to understand the dynamics of policy change, the addition of more perspectives might aid in gaining a more complete understanding. For instance, the precise motivations of politicians for holding a certain position are not always clear from the debates. An investigation of party documents and interviews with involved politicians might help in furthering our understanding, although accessibility and reliability of these sources might be a challenge.

Furthermore, the perspective of the local level should be investigated more deeply. Municipalities were responsible for actually implementing the national policies, and had significant power in directing its final outcomes. For instance, it was the municipalities that reduced the number of coffeeshops after 1995: the national policy only gave them the tools to help them do so. Mayors also acted as important policy entrepreneurs, calling for cannabis policy liberalization on multiple occasions. Arjan Nuijten has already done significant work in investigating this local level, but the research period of his study does not run beyond 2001.⁴¹⁵ Moreover, a more integrated analysis of local and national policymaking, which explores the way these two levels of policy making influenced each other, would be insightful. After all, while Nuijten's claim that 'real 'Dutch' cannabis policy' originated in the streets might be correct, this does not mean that the 'soothing words' of policy reports were without influence.⁴¹⁶

Both this thesis and Nuijten's dissertation call attention to the influence of perceived nuisance from coffeeshops. However, the exact nature and extent of this nuisance remains vague. Official reports about nuisance mostly discussed drug-related nuisance in general, and hold little information about coffeeshop-related nuisance specifically. Analysis of newspaper articles or reports and data from the police and local governments might help in improving our understanding of this nebulous but crucial factor. It would be best to investigate this issue from the perspective of the local level, and this has partly already been done by Nuijten. However, a broader analysis of this issue, investigating the situation in more cities and towns, would still be welcome. Furthermore, Nuijten's dissertation lacks discussion on the post-2001 development of coffeeshop-related nuisance. Further research investigating that period could help understand why this factor remained prominent during the VVD-led governments which ruled from 2010 onwards.

⁴¹⁵ Arjan Nuijten, *Regulating Paradise: the local origins of harm reduction in the Netherlands*, dissertation University of Amsterdam 2024.

⁴¹⁶ *Ibidem*, 304.

While there is much to be gained from investigating cannabis policy on the local level, there is also value in a broader view. The international comparison included in this thesis was asymmetrical and limited in scope. A more in-depth, balanced comparison between the Netherlands and one or two other countries could increase our comprehension of dynamics influencing cannabis policy everywhere. Broadening the scope, and not solely focusing on countries where cannabis legalization took place, could also be worthwhile. The comparison in this thesis has only investigated countries where cannabis legalization took place. For a fuller understanding of the reasons why cannabis policy succeeds or fails, it will be necessary to also research countries where cannabis policy was not liberalized.

Dutch cannabis policy, though no longer the most liberal, arguably remains more liberal than all of Europe and most of the world. It will be interesting to see how this develops in the coming years. Perhaps other European countries like Germany, Malta and Luxembourg will take the next step, and move towards full legalization. But if the Dutch example shows one thing, it is that an unpopular, imperfect policy can be very tenacious. Even though a majority in parliament has been calling for change for years, the tolerance policy still endures. And it seems unlikely that major change is coming soon. The experiment with a regulated cannabis supply system has only just begun, and will likely stall debates about full-blown policy change in the years to come. Meanwhile, the last general election brought significant growth of the 'moderate bloc' of parties which favor the continuation of the existing cannabis policy. For now, it seems the Netherlands is content to be 'overtaken'.

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Appendix A: party positions

Definitions

Pro-liberalization parties support decriminalization or legalization of cannabis cultivation or transportation.

Moderate parties do not support a change of the core of cannabis policy: they do not support the closure of all coffeeshops, nor do they support decriminalization or legalization of cannabis cultivation and transportation. Parties supporting some repressive measures, such as limiting access to coffeeshops, are still counted as moderate.

Conservative repressive parties support either the (eventual) closure of all coffeeshops, or an end to the tolerance policy altogether.

From 2010 onwards, the PVV is somewhat difficult to place: they routinely called for an end of the tolerance policy, and opposed all efforts to move toward liberalization.⁴¹⁷ However, paradoxically, they do not seem to fully reject the coffeeshops. In their election programs, they ‘only’ called for closure of all coffeeshops in a radius of 1 kilometer from schools.⁴¹⁸ How the PVV aims to maintain coffeeshops while ending the tolerance policy is very much unclear. Because of their rejection of the tolerance policy and the fact that their policy would result in the closure of almost all coffeeshops, they have been included in the ‘conservative repressive’ category. They could, however, arguably also be placed in the ‘conservative moderate’ camp, because they apparently do not want to end the coffeeshops altogether.

Table

	Progressive pro-liberalization	Conservative repressive	Conservative moderate	Conservative pro-liberalization	No (discernable) opinion
1994	SP: 2 GL: 5 PvdA: 37	CDA: 34 RPF: 3 GPV: 2	VVD: 31		

⁴¹⁷ For instance: *Handelingen II* 2007/08, nr. 60 (6-3-2008), 60-4237; *Handelingen II* 2010/11, nr. 31 (7-12-2010), 31-80; *Kamerstukken II*, 2017/18, 24077, nr. 407 (19-1-2018), 3; *Handelingen II* 2023/24, 36279, nr. 45, item 10 (28-2-2024), 45-10-41.

⁴¹⁸ For instance: PVV, *De agenda van hoop en optimisme: Een tijd om te kiezen: PVV 2010-2015*, 2010, 11; PVV, *Hún Brussel, óns Nederland: Verkiezingsprogramma 2012 - 2017*, 2012, 33; PVV: *Kamerstukken II* 2021/22, 24077, nr. 490 (1-6-2022), 3.

	D66: 24 Total: 68	SGP: 2 AOV: 7 CD: 3 Total: 51			
1998	SP: 5 GL: 11 PvdA: 45 D66: 14 Total: 75	CDA: 29 RPF: 3 GPV: 2 SGP: 3 Total: 37	VVD: 38		
2002	SP: 9 GL: 10 PvdA: 23 D66: 7 Total: 49	CDA: 43 SGP: 2 CU: 4 Leefbaar: 2 Total: 51	VVD: 24	LPF: 26	
2003	SP: 9 GL: 8 PvdA: 42 D66: 6 Total: 65	CDA: 44 SGP: 2 CU: 3 Total: 49	VVD: 28	LPF: 8	
2006	SP: 25 GL: 7 PvdA: 33 D66: 3 Total: 68	CDA: 41 SGP: 2 CU: 6 PVV: 9 Total: 58	VVD: 22		PvdD: 2
2010	SP: 15 GL: 10 PvdA: 30 D66: 10 Total: 65	CDA: 21 SGP: 2 CU: 5 PVV: 24 Total: 52	VVD: 31		PvdD: 2
2012	SP: 15	CDA: 13	VVD: 41		50Plus: 2

	GL: 4 PvdA: 38 D66: 12 PvdD: 2 Total: 71	SGP: 3 CU: 5 PVV: 15 Total: 36			
2017	SP: 14 GL: 14 PvdA: 9 D66: 19 PvdD: 5 Total: 61	CDA: 19 SGP: 3 CU: 5 PVV: 20 Total: 47	VVD: 33 DENK: 3 50Plus: 4 Total: 40	Fvd: 2	
2021	SP: 9 GL: 8 PvdA: 9 D66: 24 PvdD: 6 Volt: 3 Bij1: 1 Total: 60	CDA: 15 SGP: 3 CU: 5 PVV: 17 Total: 40	VVD: 34 Denk: 3 50Plus: 1 Total: 38	BBB: 1 Fvd: 8 Total: 9	Ja21: 3
2023	SP: 5 GL/PvdA: 25 D66: 9 PvdD: 3 Volt: 2 Total: 44	SGP: 3 CU: 3 PVV: 37 Total: 43	VVD: 24 BBB: 7 NSC: 20 CDA: 5 DENK: 3 Total: 59	Fvd: 3 Ja21: 1 Total: 4	

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